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CHILD ABUSE VICTIMS' RIGHTS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 985

A BILL TO PROTECT THE RIGHTS OF VICTIMS OF CHILD ABUSE

SEPTEMBER 24, 1985

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CHILD ABUSE VICTIMS' RIGHTS ACT

TUESDAY, SEPTEMBER 24, 1985

U.S. Senate,
Subcommittee on Juvenile Justice,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:45 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles Grassley presiding.

Also present: Senators Specter and McConnell.

Staff present: Neal Manne, chief counsel; Tracy McGee, chief clerk; Tracy Pastrick, staff assistant; and Kolan Davis, counsel for Senator Grassley.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator Grassley. I would like to thank all of you for your patience while we are still in the process of voting. But I have already voted, and Senator Specter has sent the signal for me to go ahead and start because he is voting.

I would, first of all, thank Senator Specter for holding this hearing on S. 985, the Child Abuse Victims' Rights Act, and for the chairman's continuing efforts in combating crimes against children.

Congress has already concluded that child pornography and prostitution are highly organized, multi-million-dollar industries that operate on a nationwide scale. It has been estimated that 50,000 children disappear and more than 1.5 million children are sexually molested, filmed, or photographed each year for the use of pornography. In the past Congress has had some success in attacking the problem of child exploitation. Because of the Child Protection Act of 1984 which removed obscenity and the words "engaged for profit" requirements, there has been an increase in child pornography prosecutions and convictions.

Nevertheless, most exploiters escape prosecution. So there remains much to be done by the Congress. Consequently, in an effort to continue the attack on these crimes, I have introduced S. 985 which is before us today. Under current law a child pornographer can only be sentenced up to 10 years. Repeat offenders are sentenced for a mere mandatory 2 years, and in order to prevent interstate distribution of pornographic literature involving the victim, the victim must seek injunctive relief from every State that may be involved, and of course this is a very impossible task to accomplish.

Now, under S. 985, child pornography would become a predicate offense under the Racketeer Influenced and Corrupt Organizations Act, commonly called RICO. Accordingly, penalties of up to 20 years imprisonment for child pornography would be available then, and forfeiture provisions would be enhanced. Perpetrators who invade youth organizations to gain access to potential victims may also be reached this way.

In addition, under the civil provisions of RICO, treble damages as well as Federal injunctive relief would be available to child victims. RICO would also be expanded to include injuries to the person, but only for the violations under the two child pornography statutes, sections 2251 and 2252. This is significantly different than previous measures that applied personal injuries to other predicate offenses under RICO.

Two additional provisions would protect children through the imposition of mandatory sentences in the following areas: Section 5 of the bill provides for a mandatory life sentence for the kidnaping of a child. In its present version, section 5 includes noncustodial parental kidnaping as an offense. This was not my intent, and through the amendment process I plan to modify section 5 so that it will involve only nonparental kidnaping.

Nevertheless, parental kidnaping is a very important concern that needs to be addressed, and I plan to look into that as a separate issue.

Section 6 of the bill provides for mandatory 5-year sentences for repeat child pornographers. There should be no room in imposing minimum sentences on those that commit these disreputable crimes for the second time and who will probably commit them again. That is bound to happen; we know that there is a pattern there.

S. 985 also calls for an Attorney General's report to issue recommendations on courtroom procedures that would serve as a model for measures designed to facilitate the testimony of child witnesses across the country. There has been a good deal of State legislation passed in this area, but there are some questions as to whether some of it is constitutional. Consequently, this report should provide needed guidance in developing some effective Federal and State legislation that will survive constitutional scrutiny.

In addition, section 8 is an attempt to update Federal crime files to facilitate background checks on individuals working in child care facilities. Now, I understand that the FBI has some reservations regarding this section. I look forward to working with the Justice Department in order to find a solution to that problem.

Last, I would like to say I have introduced this package knowing that it does not include the entire range of possible solutions to the problem, but I hope that it will help us build on our past successes in the continuing battle against child exploitation, and I very much look forward to hearing the opinions of our distinguished witnesses today.

[The text of S. 985 and Senator Denton's prepared statement follow:]

99TH CONGRESS
1ST SESSION

S. 985

To protect the rights of victims of child abuse.

IN THE SENATE OF THE UNITED STATES

APRIL 24 (legislative day, APRIL 15), 1985

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To protect the rights of victims of child abuse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Child Abuse Victims Rights Act of 1985".

FINDINGS

SEC. 2. The Congress finds that—

(1) child exploitation has become a multi-million dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;

(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws proscribing such activity;

(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children proscribed by Federal law, and exploitation victims lack effective remedies under Federal law;

(4) child molesters and others who prey on children frequently seek employment in or volunteer for positions that give them ready exposure to children;

(5) Congress has encouraged background checks to prevent individuals with a record of child abuse from attaining such positions; however, current Federal files contain insufficient information to identify crimes involving abuse of children;

(6) abductions of children under the age of 18, frequently involving noncustodial parents, cause considerable emotional and physical trauma, yet individuals convicted of such offenses are rarely sentenced and noncustodial parents are rarely prosecuted;

(7) mandatory sentences for kidnaping of children would provide an effective deterrent for such offenses and reduce recidivism; and

(8) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses.

INCLUSION OF SEXUAL EXPLOITATION OF CHILDREN UNDER RICO

SEC. 3. Section 1961(1)(B) of title 18, United States Code, is amended by inserting after "section 1955 (relating to the prohibition of illegal gambling businesses)," the following: "sections 2251 and 2252 (relating to sexual exploitation of children),".

AUTHORIZATION OF CIVIL SUITS UNDER RICO FOR PERSONAL INJURY

SEC. 4. Subsection (c) of section 1964 of title 18, United States Code, is amended to read as follows—

"(c) Any person injured—

"(1) personally by reason of a violation of section 1962 of this chapter if such injury results from an act indictable under sections 2251 and 2252 of this title (relating to sexual exploitation of children); or

"(2) in his business or property by reason of any violation of section 1962 of this chapter, may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.".

DEATH SENTENCE OR MANDATORY LIFE IN KIDNAPING OFFENSES INVOLVING THE MURDER OF A MINOR

SEC. 5. Section 1201 of title 18, United States Code, is amended—

(1) in subsection (a) by striking out "except in the case of a minor by the parent thereof,";

(2) in subsection (a) by inserting ", except as provided in subsection (g) of this section," before "be punished"; and

(3) by adding at the end thereof the following:

"(g)(1) If the victim of an offense under subsection (a) is a person who has not attained the age of 18 years, the punishment shall be imprisonment for life. Notwithstanding any other provision of law, the court, in imposing a life sentence under this subsection, shall not sentence the defendant to probation, nor suspend such sentence, and the defendant shall not be eligible for release on parole.

(2) If during the course of an offense for which the punishment is provided by this subsection, the offender kills such victim, the judge may, in lieu of the punishment provided in paragraph (1), sentence such offender to the penalty of death. The procedures made applicable to the penalty of death in aircraft piracy cases by section 903(c) of the Federal Aviation

Act of 1958 (49 U.S.C. App. 1473(c)) shall also be applicable to the penalty of death under this subsection, except that, notwithstanding paragraph (7) of such subsection, the court may decline to impose the sentence of death.".

MANDATORY MINIMUM SENTENCE

SEC. 6. Section 2251(c) of title 18, United States Code, is amended by—

(1) striking out all that follows the fifth comma and that precedes the first period, and inserting in lieu thereof "such person shall be imprisoned not less than five years nor more than 15 years, and may also be fined not more than $200,000".

(2) adding at the end thereof the following: "Notwithstanding any other provision of law, the court, in imposing sentence for a person with a prior conviction under this section, shall not sentence the defendant to probation, nor suspend such sentence, and the defendant shall not be eligible for release on parole until he has served not less than five years.".

(b) Section 2252(c) of title 18, United States Code, is amended by—

(1) striking out all that follows the fifth comma and that precedes the first period, and inserting in lieu thereof "such person shall be imprisoned not less than five years nor more than 15 years, and may also be fined not more than $200,000".

(2) by adding at the end thereof the following: "Notwithstanding any other provision of law, the court, in imposing sentence for a person with a prior conviction under this section, shall not sentence the defendant to probation, nor suspend such sentence, and the defendant shall not be eligible for release on parole until he has served not less than five years.".

ATTORNEY GENERAL REPORT

SEC. 7. (a) Within one year after the date of enactment of this Act, the Attorney General shall submit a report to Congress detailing possible changes in the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

(b) In preparing the report, the Attorney General shall consider such changes as—

(1) use of closed-circuit cameras, two-way mirrors, and other out-of-court statements;

(2) judicial discretion to circumscribe use of harassing, overly complex, and confusing questions against child witnesses;

(3) use of videotape in investigations to reduce repetitions of interviews;

(4) streamlining investigative procedures; and

(5) improved training of prosecutorial and investigative staff in special problems of child witnesses.

REQUIREMENT OF DETAILED FBI OFFENSE CLASSIFICATION SYSTEM

SEC. 8. The Attorney General shall modify the classification system used by the National Crime Information Center in its Interstate Identification Index, and by Identification Division of the Federal Bureau of Investigation in its Criminal File, with respect to offenses involving sexual exploitation of children by—

(1) including in the description of such offenses the age of the victim and the relationship of the victim to the offenders; and

(2) classifying such offenses by using a uniform definition of a child.

MEMBERSHIP OF ADVISORY BOARD ON MISSING CHILDREN

SEC. 9. Subsection (a) of section 405 of the Missing Children's Assistance Act (Title IV of Public Law 93-415), as added by section 660 of the Comprehensive Crime Control Act of 1984 (Public Law 98-473) is amended by—

(1) striking out "9 members" and inserting in lieu thereof "10 members";

(2) striking out "and" after the semicolon in clause (5);

(3) striking out the period at the end of clause (6) and inserting in lieu thereof "; and"; and

(4) inserting at the end thereof the following:

"(7) One member position to be filled by the parents of a missing child to be selected from the State of Iowa based on their knowledge of child abuse prevention and their contributions in the area of missing children.".

Prepared Statement of Hon. Jeremiah Denton, a U.S. Senator From the State of Alabama

Mr. Chairman, I would like to commend you again on your leadership in addressing the major issues affecting our Nation's children. I believe that the subcommittee has been instrumental in providing for the protection of young Americans.

I would also like to commend our distinguished colleague from Iowa, Mr. Grassley, for his contributions to the safety and protection of our children. Senator Grassley was a key player in obtaining the passage of the Child Protection Act of 1984. The act amended chapter 110 of title 18 of the U.S. Code as it relates to the sexual exploitation of children. The act stands as a formal recognition that the need to protect our children from sexual exploitation far outweighs the alleged First Amendment rights of pornographers.

I believe that the Child Protection Act represents an important first step in protecting our young people. Some elements of the bill under discussion today, S. 985, could represent that important second step.

One element would amend the racketeering and influence of corrupt organizations [RICO] statutes to include sexual exploitation of children. Incorporating sexual exploitation of children in RICO would not only give prosecutors an additional weapon to fight organizations. It would also provide the victims with civil remedies that are currently lacking under Federal law, including injunctive relief to halt the dissemination or pornography across state lines—out of the reach of state remedies—and treble damages for personal injuries. I understand that the provision has the support of the FBI and the National Center for Missing and Exploited Children.

A second element of S. 985 would direct the Attorney General to examine possible changes in the Federal rules of evidence, criminal procedure, and other Federal courtroom, prosecutorial, and investigative procedures to facilitate the use of child witnesses in cases involving child abuse. The examination would focus on such things as the use of closed-circuit cameras, two-way mirrors, videotaping and other courtroom procedures.

Mr. Chairman, children who have been abused or sexually molested have suffered extreme trauma. Often, however, they suffer additional trauma from the justice system and other community agencies because of insensitive and intimidating investigative and adjudicative procedures.

A most disturbing example of an insensitive procedure is the practice, in some jurisdictions, or repeated interrogation of the child victim. In many cases, the abused child is subjected to countless grueling and detailed investigative interviews. Not only do duplicative, insensitive and intimidating interview procedures cause greater trauma to the child victims and their families, but they frequently result in less effective intervention and prosecution. Rather than providing child victims with necessary respect, understanding and compassion, the procedures reduce the children to automations, caught in the adult drama of the courtroom. The provision in S. 985 could change the current situation for the better.

Mr. Chairman, other elements of S. 985 require more review and study. For example, the provisions calling for the elimination of the parental exemption from the Federal kidnapping statute, a mandatory sentence, and a potential death penalty for criminals who kidnap children may actually adversely affect a prosecutor's ability to bring a kidnapper to justice. I know that the provision is currently opposed by the National Center for Missing and Exploited Children. The opposition is based on a belief that the provision would make the penalties so harsh that a prosecutor would simply choose not to prosecute under the federal kidnapping statute.

Additionally, the provision requiring modification of the classification system used by the National Crime Information Center in its Interstate Identification Index, and by the Identification Division of the FBI in its criminal file, needs more review. At present these systems are not designed to list the additional information required by S. 985. Additionally, since the information for these reports are voluntarily submitted to the FBI, the Bureau would lack the mechanism to mandate submission of the additional information. I also question, from a states' rights standpoint, the propriety in requiring a uniform Federal definition of a child.

Mr. Chairman, in light of our mutual commitment to continue to fight for the protection of our children, I will follow the progress of S. 985 with great interest.

Thank you, Mr. Chairman.

Senator Grassley. Of course, we start with Senator Paula Hawkins from Florida. She is a person that on other committees in this Congress, has worked very diligently in this effort and has been very cooperative in the past and has been pioneering in this area of legislation with something similar to what I have introduced in other legislation. We want to compliment you for that, and look forward to working with you, Senator Hawkins, on reaching a mutual understanding.

Would you proceed?

STATEMENT OF HON. PAULA HAWKINS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator **Hawkins**. Thank you, Mr. Chairman. It is a pleasure to be here today to join once again my distinguished colleagues in our continuing efforts to protect our Nation's children. The Members of the class of 1980 have really played a major role in instituting some marvelous changes in the manner in which our children are protected. We have had some successes: the Missing Children Act, the Missing Children Assistance Act, the reauthorization of the Juvenile Justice and Delinquency Prevention Act, redefining the term "sexual abuse" in the Child Abuse Prevention and Treatment Act, and our success in convincing the Department of Justice to liberalize their policies regarding parental kidnaping, as was also noted by the Senator.

We fought together to ensure that day care and juvenile welfare mothers who are entrusted with the care of our children are properly screened. We have fought for adequate funding for child abuse, runaway, and juvenile justice programs, and last session we succeeded in enacting very important legislation, the Child Protection Act. But we cannot afford to rest on our laurels. The abused, the exploited, and the neglected children of the United States need help. They need protection, and they deserve justice. Last session this subcommittee developed, considered, and enacted the Child Protection Act, which is landmark legislation recognizing that sexual exploitation of minor children is a form of child abuse, and this form of obscenity is not protected by the first amendment.

When I joined as an original cosponsor of S. 57, the bill contained a provision that would include child pornography under the coverage of RICO, the Racketeer Influenced Corrupt Organizations Act. I was disappointed that this provision was deleted in the House before its final enactment. I believe that the provision was dropped not on its merits, but because of the controversy and confusion over the scope of the coverage of RICO, an issue which was at that time pending before the Supreme Court.

Perhaps it is fortunate that enactment of this provision was delayed for one session because I believe that the RICO legislation before your subcommittee this session is a major improvement. Besides your legislation, you have made note of my legislation, S. 625, dealing exclusively with RICO, that is pending before this subcommittee, and I urge the subcommittee to look into that legislation that would expand RICO's coverage.

S. 625, as well as section 4 of Senator Grassley's bill S. 985, doesn't just include child pornography under the coverage of RICO, it also expands the civil action portion of RICO to include recovery for damages to the person, as well as property for the two categories dealing with sexual exploitation of children, child prostitution or child pornography.

The expansion for these two categories is justified. The intent of the RICO civil suit provision was to encourage private enforcement of this critically important statute while recompensing the victims of illegal conduct. Given the nature of the crimes of sexual exploitation of children, civil recovery for property damages is virtually useless, but civil suits for damages to the person for the emotional and long lasting psychological harm caused by this kiddie porn would be consistent with the purposes of the RICO Act and give these children a fair chance to receive restitution. I would also support the provision in your bill S. 985, that would make parental kidnaping a Federal as well as State crime.

I realize that concerns have been expressed regarding the parental kidnaping provisions in S. 985. I share some of those concerns, especially over the sections which require mandatory minimum life sentences with no possibility of probation, suspended sentence or parole for all child kidnapings, including parental kidnapings. But I hope that the subcommittee will carefully consider the feasibility of removing the parental exemption from the Federal kidnaping statute and thus making it a Federal crime. Here in the Nation's capital, the District of Columbia, parental kidnaping is not a crime, and thus custodial parents have little or no legal resource to locate or be united with the kidnaped child.

In many States kidnaping of a child by a noncustodial parent is a misdemeanor, and the parent cannot avail themselves of the Parental Kidnaping Act which requires a fugitive felon warrant. Some States make parental kidnaping a felony crime only if it is proven that the child has been taken out of State.

Many States restrict enforcement by limiting the children protected to those under a certain age. I believe that your legislation would close this gap that we have here. And I am also pleased to see John Walsh here, who has traveled from State to State. He is one of the best private partners we have ever had in the battle for safe children.

And as I have talked with John and observed him at all these meetings, and seen how he has been physically worn down by much traveling while trying to patch up the State laws, I have become increasingly touched by his devotion to the safety of our children. He realizes importance of having some kind of national guideline. If you talk with John and you talk with other parents who have been involved in parental kidnapings, you learn firsthand that this is not a battle between parents over a child loved equally by both parents. That is a myth. The motive of the parent that takes the child is usually revenge, and the child is usually the pawn.

It is long past time that the Federal kidnaping statute was amended to cover all kidnapings of minor children, and not exclude parental kidnapings. It is a myth that these children are snatched by loving parents. Often the parent's motive is revenge and the children are merely pawns. Many law enforcement authorities cite the fact that parents are specifically excluded from the Lindbergh Act, which make kidnaping a crime as evidence and justification for not getting tough with mom or dad.

I certainly would support the provision which increases the penalty for repeat convictions for child pornography and child prostition. If treatment programs are not successful in detering these individuals from continuing their exploitation and abuse of children, then longer periods of incarceration may be the only method available to protect children from abuse and explotation.

Many of the provisions in S. 985 were incorporated into S. 140, the Children's Justice Act which was favorably and unanimously reported out of the Senate Labor and Human Resources Committee on July 10 of this year. Senator Grassley offered some excellent amendments which I believe enhances the effectiveness of the bill to provide justice to these abused children. One of Senator Grassley's amendments requires the Attorney General to modify the classification system for offenses involving sexual exploitation of children by including a description of such offenses, the age of the victim, the relationship of the victim to the offenders and use a uniform definition of a child. His amendment to S. 140 would require the Attorney General to apply this new classification system for the National Crime Information Center's interstate identification index, the FBI's criminal file and its uniform crime reporting system. The addition of the revision of the uniform crime reports of the FBI makes the provision consistent with the recommendations of the Attorney General's Task Force on Family Violence.

Another provision which was added to the Children's Justice Act addresses another provision in Senator Grassley's legislation. The Children's Justice Act purpose is to encourage child protection reforms on the State rather than Federal level. It requires the National Center on Child Abuse and Neglect and the Department of Justice to collect, analyze, and disseminate information to the various States within 180 days of enactment. These types of reforms have been the subject of several Department of Justice grants. During our hearing, the interim report of a National Institute of Justice grant entitled "When the Victim is a Child, Issues for Judges and Prosecutors" was present to our subcommittee.

The provision in S. 985 which requires the Attorney General within 1 year of enactment to submit a report to Congress detailing the possible changes in Federal rules and procedures is consistent with the provisions in S. 140 which requires the Departments of HHS and Justice to work together to compile, analyze and disseminate information about possible changes in State rules and procedures designed to facilitate the use of children's testimony in cases involving child abuse and sexual exploitation.

Again, I thank the subcommittee for the opportunity to testify today and I also thank you for your longstanding and strong committment to protecting our Nation's children.

Senator **Grassley**. We would also be pleased if you would stay and participate, if your schedule permits.

Senator **Hawkins**. Thank you.

Senator **Grassley**. And also let me suggest that for your benefit, because I am sure you cannot remember everybody who is cosponsoring your bill, I am also a cosponsor of your legislation. Obviously we do look forward to working with you and mutually agreeing on some legislation that we can both work for. Hopefully, it will be a very strong piece of legislation, and there will not be a compromise of any principles that we have placed as the basis of this legislation.

I have no specific questions to ask you at this point.

Senator **Hawkins**. Thank you. I look forward to working with you on the solution to ths problem.

Senator **Grassley**. Thank you very much.

This meeting today is rescheduled from a cancellation of last week, and last week Congressman Jack Kemp, who has introduced a companion bill to my bill on the House side, was going to come last week, but because of a conflict cannot come today. But his testimony is here, and I will place it in the record at this point as if he were here to give his statement.

[Statement follows:]

PREPARED STATEMENT OF HON. JACK KEMP, A U.S. REPRESENTATIVE, FROM THE STATE OF NEW YORK

Mr. Chairman, members of the committee, I want to thank my good friend and distinguished colleague from Iowa, Senator Charles Grassley, for giving me the opportunity to testify on the very important subject of child pornography. Senator Grassley has been a leader in the fight against those criminals who seek to exploit and destroy our children through the vile practice of child pornography, and I know I speak for many thousands of parents and children around the country in thanking him for his efforts.

Last week I introduced H.R. 3298, the Child Abuse Victims Rights Act of 1985. This bill is a companion to Senator Grassley's bill, S. 985, which is the subject of today's hearing. This bill contains a variety of powerful provisions to combat child pornography. The first would place sections 2251 and 2252 of title 18 of the United States Code under the racketeering and influence of corrupt organizations statutes [RICO]. This will provide for the additional penalties and fines available under RICO statutes to be brought to bear against child pornographers, as well as give investigators and prosecutors of these crimes special tools such as wiretap authority, special grand juries, and broad subpoena authority. Inclusion of these crimes under RICO will also provide the personal civil remedies and injunctive relief that are needed to stop the dissemination of child pornography across State lines.

Another important provision of the legislation is the establishment of a national clearinghouse on cases involving child abuse. This provision will be very helpful in allowing child care organizations to do background checks on prospective employees.

Two provisions will help protect children from repeat offenders through the imposition of mandatory minimum sentences. The bill imposes a mandatory life sentence for the crime of kidnaping a child, and allows a judge to impose the death penalty on an individual convicted of a kidnaping if it results in the death of the child victim. The bill also imposes a minimum sentence of 5 to 25 years for repeat offenders.

This legislation also addresses the issue of child victims as witnesses. Often the most troubling roadblock to the prosecution of child pornographers is the procedures that discourage the use of children as witnesses. This bill will direct the Attorney General to study possible changes in the Federal rules of evidence, criminal procedure, and civil procedure and other courtroom prosecutorial and investigative initiatives that could facilitate the use of children as witnesses. Such improvements might include the use of two way mirrors and closed circuit television to observe child witnesses; and use of judicial discretion to circumscribe the questioning of such witnesses to avoid harrassment and confusion; and better training of law enforcement officials to enable them to deal with these issues in a sensitive way.

This is a good bill, and one which will be strengthened and improved through the committee process. I am greateful that Senator Grassley has agreed to accept change in the legislation that I suggested. This provision would delay the statute of limitations clock from ticking on offenses related to child pornography until the victim reaches the age of 18. I think that this provision will make it easier for the victims to bring their tormentors to justice without the fear of reprisals.

It is impossible to overstate the urgency with which this legislation is needed to protect our children from this heinous crime. I commend Senator Grassley once again for his work on this issue, and I look forward to the passage of this legislation by both the House and the Senate in the year to come.

Senator **Grassley**. It would be my pleasure now to invite the witness from the administration, from the Criminal Division of the

Department of Justice, Deputy Assistant Attorney General; she is Ms. Victoria Toensing. We welcome you here and would ask you to give your statement, as is the tradition of summarizing, and we will print your entire statement in the record. And then I and other committee members will probably have some questions for you. Would you proceed, please. Welcome here and thank you for coming. Thank you for being patient, too.

STATEMENT OF VICTORIA TOENSING, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. Toensing. Thank you, Mr. Chairman, and thank you for asking me to discuss the Department views on S. 985. This bill contains numerous provisions on victims of child abuse. We welcome your interest as we are all repulsed by those who would violate our children. I personally respond to this legislation in this area as a mother of three children who shares your concern for this kind of heinous crime.

I want to discuss our support for certain provisions and explain why we do not support other provisions because, in our view, they could be counterproductive to current law enforcement purposes and programs. I have a complete statement for the record, Mr. Chairman. This is a truncated version. So I will be very brief.

Senator Grassley. OK. Thank you.

Ms. Toensing. I would like to address just a few of the sections, though, and I would like to start with section 3. This section adds offenses relating to the production and dissemination of child pornography as predicate offenses to the RICO statute. The Department wholeheartedly supports this amendment. The sexual exploitation of children is a heinous crime. Were such conduct a pattern of racketeering activity, it would be even more dangerous and odious, and the use of RICO's unique and powerful criminal provisions are particularly appropriate in this situation.

Regarding section 4, where it would authorize a civil RICO suit on behalf of the victim of such offenses, the Department is opposed to this. Let me go into the details as to why. Presently, there is a treble damages suit available under 18 U.S.C. 1964(c), which is part of the RICO statute. To any person injured in his business or property, the proposed legislation would add a suit for those injured personally by a RICO violation if the injury resulted from an act indictable under the child pornography statutes.

We are concerned, Mr. Chairman, that worthy though this goal is, it could result in confusion in judicial interpretations in this area of damages and thereby mess up the entire area of RICO damages. There have been recent Supreme Court decisions on issues in this area, and there are more issues out there wending their way up the court system. The proposed amendment would add yet another aspect to the controversy.

It is crucially important for those who prosecute under the RICO statute that it be used primarily as a criminal enforcement tool. I might point out that there are similar predicate offenses for RICO, such as murder, kidnaping, and prostitution which would equally arouse our sympathy to create a personal injury kind of provision.

We have taken victim compensation as an important issue with the Department and have tried to set it aside and concentrate on it in that arena and under statutes that provide for victim compensation. We would like to keep it as a separate issue so we can just look at those kinds of statutes and build on them.

We are very afraid that we could affect our RICO as a criminal prosecution statute. There are appropriate statutory vehicles for implementing victim protection. There is the restitution statute, 18 U.S.C. 3579, and the recent crime bill which the Senate overwhelmingly passed last fall. It provided for victims of crime, and we would like to be working in that area with you in this regard.

As you mentioned earlier, the committee is deleting section 5—regarding the parental kidnaping exception—and we wholeheartedly concur with the committee in this deletion.

Section 6 would provide mandatory sentences of 5 years for recidivists and also prohibit suspended sentences or probation. Historically, the Department has opposed mandatory sentences, and we do so now particularly in view of the new Sentencing Guideline Commission, which is charged with establishing guidelines in this whole area. That opposition has nothing to do with the merits of a lengthy sentence, which we endorse for these crimes, but is really grounded in a desire to have the sentencing Commission carry out its task of proposing appropriate, narrow sentencing ranges based on the offense and on the offender. If the committee decided to retain this provision, we have some technical suggestions that I have discussed in depth in my statement.

Section 7: This is the section which requires the Attorney General to report within a year detailing possible changes in the Federal rules and other courtroom prosecutorial and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

The Department is entirely in sympathy with the concerns reflected in section 7; the use of child witnesses involves many special considerations, and that is just the point. The Department has already become involved in this area. We have funded two task forces which have submitted recommendations in this area, and I brought them along. Perhaps the committee already has these reports, but I brought them for the staff just in case you did not.

Senator **GRASSLEY**. We do have those.

Ms. **TOENSING**. From these reports, now, Mr. Chairman, the National Institute of Justice will issue a report in a couple of months regarding the child abuse area. We will brief your staff and make that available to you so that we could work together in this area.

The Department is also working actively with the National District Attorneys Association and the National Association of Attorneys General to provide resource material and training for local prosecutors. And the Bureau of Justice Statistics is currently funding demonstration projects in six local prosecutors' offices.

Handling child witnesses is a daily problem mostly for your State and local prosecutors who deal with the statutes involving sexual crimes like molestation and rape. There are few statutes in Federal criminal law, and we are not aware of significant problems involving the use of child witnesses in Federal cases. For instance, Mr. Chairman, in the child pornography cases, the Government need not rely on child witnesses to establish the elements of the offense, and we try not to use child witnesses if we do not have to put them through that ordeal.

However, one exception to this characterization of Federal prosecution is in the District of Columbia, and here the U.S. attorney functions also as a local prosecutor, as I am sure you are aware. Many cases involving the use of child witnesses arrive in the local U.S. attorney's office in Superior Court. There we have a special program for working with child witnesses. It has been developed by that office in the last couple of years, and I would like to describe that in some detail because I think it would be of interest to the committee and you may want to talk with some of the members of that office.

First—and I might point out that it addresses many of the concerns that the committee wanted answered in a report: The use of closed circuit TV cameras, the judicial discretion in how questions are answered, and the videotape. But let me just tell you some of the things that they are doing there because I think it is an exciting program.

Felony cases involving sexual offenses against minors are viewed as the most serious cases, and the most experienced prosecutors are assigned to these cases. They have a vertical processing system whereby the same prosecutor is assigned to the case from the initial intake throughout the whole trial so that the child gets used to that prosecutor and gets to know him or her.

Second, the felony child sexual offense cases are placed on a special felony calendar along with first degree murder, rape, and multidefendant cases. Three judges are assigned to hear only this short calendar, and this ensures an early trial date and rapid processing of the cases.

Third, the Federal prosecutors who handle these cases work closely with the child support services personnel at Children's Hospital in order to learn the best techniques for dealing with child witnesses. This includes lectures by psychologists and other professionals, instructions in interviewing techniques such as the use of anatomically correct dolls and other kinds of devices helpful to the children.

Finally, legislation is pending before the District of Columbia City Council which would allow the videotaping of children's testimony and the use of closed circuit television. So they are really experimenting with all of these areas that your bill outlines as far as this report.

What all of these studies have revealed is that the issue of the use of child witnesses is in a very dynamic state presently. Many experiments are being conducted at the State and local levels. Much research is being done. The States and the D.C. Federal prosecutor's office are proving to be very useful laboratories for us in the development of these techniques.

We believe that we should await the results of these diverse, ongoing efforts before moving ahead to study the question of what, if anything, needs to be done at the Federal level.

We would be glad to work with you and tell you how things are progressing and evaluate the techniques that are being used in our local prosecutor's office. I promise to use whatever influence I have over there to get some of the staff to talk to you.

Mr. Chairman, I would just like to comment on the NCIC. As I understand it, the FBI and the Justice Department are working with your staff to see how we can accommodate your concerns with that part of the legislation. I have no further comments. I would be glad to answer any questions the chairman has.

Senator GRASSLEY. First of all, I want to thank you for your testimony and particularly for, I know, a good faith offer to work with us on the evolution of this legislation. There is in that regard considerable difference between what we have in our bill and some of the positions of the Department of Justice.

But I know that you recognize the problem. There might be some differences on how to tackle it, and of course we would try to convince you that we have to do something as sweeping as what we feel we have to do in this legislation. But we should sit down and visit in detail about the legislation.

In anticipation of some followup meetings, I would suggest to you as far as the 1984 Crime Control Act that Congress passed, that we did preface section 3551, which authorized sentences—it is the provision for authorizing sentences—with a phrase, "except as otherwise specifically provided." So therefore, I think it is very clear that notwithstanding any new sentencing procedures, Congress inserted the provision that would allow it to mandate certain sentences for special crimes, and it would be in that vein and working within the intent of the Crime Control Act that we proposed changes in this legislation that I think your testimony takes exception to.

Also, the Supreme Court case in *New York* v. *Ferber* recognized the special status of children and the need for governments to take special measures to protect children. Crimes against children, and especially repeat offenders demand, in my view, the special penalty provided in S. 985, and of course, according to the quote from 3551, this penalty is well within the intent of Congress under the 1984 Crime Control Act.

I would defer to the chairman of the committee. I have already thanked you for your leadership in this area.

Senator SPECTER. You can do that again.

Senator GRASSLEY. Since you are the chairman, I will do that again. Thank you very much for your leadership in this area, particularly for holding this meeting on this bill of mine.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Well, I regret my late arrival, but I have been in the appropriations markup on the interior bill. I commend Senator Grassley for his initiative in introducing this legislation. Senator Grassley has been a valued and active member of the Judiciary Committee, and he and I have worked together on a number of matters involving juveniles and pornography.

We worked together on legislation which was enacted in 1984 toughening up the laws on pornography, and when this bill was called to my attention and a hearing was requested, I immediately said that it was a very important matter which deserved a prompt hearing, and I am pleased to work with Senator Grassley on the matter.

I regret that I cannot stay because I am obligated to be on the floor to offer an amendment to the Superfund bill, but I leave the gavel in good hands, Senator Grassley.

Senator GRASSLEY. Thank you very much. I also complimented you for your work in the area on the bill that we did pass last year that was signed by the President in August of 1984. In fact, you were the first one to introduce legislation in that area. Thank you very much.

Senator SPECTER. Thank you.

Senator GRASSLEY. Now, if I could go to the questioning, and it depends on how long we take; I have several questions here, but we may have to submit some in writing. But let us see how it goes.

At a hearing before the Permanent Subcommittee on Investigations in February, you submitted a statement that the Department of Justice intends, and I quote, "to move far more aggressively," unquote, against child pornographers than in the past.

I would like to have you inform this subcommittee, as opposed to the Permanent Subcommittee on Investigation, on what new, aggressive steps the Department of Justice has taken in the 7 months since the submittal of that statement.

Ms. TOENSING. First, I would like to thank the Congress for the wonderful tool that we were provided, in May of 1984, the child pornography statute, Mr. Chairman. It enabled us to have the following statistics which I would like to share with you. In the last 16 months, since May 21, 1984, we have indicted 118 defendants and we have convicted 94 persons.

Now, that is almost one and a half times the number of people that we had indicted in the prior 6 years that we had the old statute. We had a child pornography statute, but we had to prove obscenity under the old law. So in 16 months we are almost getting double what we had done in 6 years. Those are rather tragic figures in that the cases had to be brought, but it is nice that we have the tools.

Senator GRASSLEY. OK. So then the answer to the question of what steps have been taken within the last 7 months since that statement was made, is that the Department of Justice was going to move far more aggressively in the area of indictments.

Ms. TOENSING. That is right. And we have convictions. We have 94 convictions out of 118 indictments. That is pretty good batting.

Senator GRASSLEY. In your testimony, I am asking you to explain a reference to the interagency group. Would you explain to us how it operates and what effect it has had on the child exploitation problem.

Ms. TOENSING. Are you talking about the international group, Mr. Chairman?

Senator GRASSLEY. No. The interagency group that is referred to in your testimony, or your statement, as opposed to your oral testimony.

Ms. **Toensing**. I think that that is our international group. I will have to go back and look at that. We had a group from various agencies.

Senator **Grassley**. I am sorry. Let me make it more clear. It was your statement of February that I am referring to, not the statement today, the interagency group that was referred to in that statement.

Ms. **Toensing**. That would not have been my statement. So I would have to look at that to see what you are referring to.

Senator **Grassley**. Well, my staff says that you were the one who did testify before the——

Ms. **Toensing**. I submitted the statement; I have just been reminded. I submitted the statement; I did not testify.

Senator **Grassley**. OK.

Ms. **Toensing**. That is the international group. Let me explain that group. In fact, I have Mr. Reynolds here who is my deputy from the general litigation section who is our representative on that group. Perhaps you would like to hear from him.

Senator **Grassley**. Either one of you; I would like to know more about that group.

Ms. **Toensing**. Mr. Reynolds went to the Netherlands with that group.

Senator **Grassley**. Please feel free to sit and respond to the question.

Mr. **Reynolds**. The international effort on child pornography has involved State Department, FBI, Customs, the Postal Inspection Service, and the Criminal Division of the Justice Department, and delegates from each of those agencies, traveled to Denmark, Sweden, and Holland in January.

The effort has focused on trying to gain the cooperation of those three foreign nations in preventing the shipment out of their countries into the United States of child pornography. So, in other words, it is really an interdiction effort, as opposed to an effort leading to prosecutions in the United States.

I think it is too early to tell you whether that effort is going to succeed in the long run, but I am very optimistic it will. We have received good cooperation from the foreign governments. A Dutch delegation visited the United States in mid-June of this year. They have been very cooperative, and just a week ago we had representatives of all three of the countries attend a seminar on child protection at the FBI Academy in Quantico.

Senator **Grassley**. Thank you very much for bringing us up on that and clarifying the point on interdiction.

Is it not true that outside of traditional organized crime, there are such organized groups as the North American Man Boy Love Association, the Child Sensuality Circle, and other groups that advocate the criminal exploitation of children?

Ms. **Toensing**. I have heard of some of these groups, and I know that there are groups such as these that do advocate that, yes.

Senator **Grassley**. Would not these groups fit into what the Supreme Court in its *Sedima* decision determined to be organized crime?

Ms. **Toensing**. I would be glad to take any of those groups and have us look at them, along with the FBI, and give you an analysis.

Senator GRASSLEY. OK. Well, then submit that in writing.

Do some of these organizations operate for profit?

Ms. TOENSING. We have not found a lot of that. What we have found, Mr. Chairman, is in the child pornography area many of these people are motivated by their own personal feelings about this subject, and really it is a personal kind of sharing. However, we still support the RICO provision because this could be an area very ripe for organized crime and one could make a lot of money on it. But we are not finding that as far as the prosecutions. We are finding it much more of a personal kind of sharing of this material.

Senator GRASSLEY. On the other hand, over a period of years we have had testimony of the massive amount of profit or income from the trafficking of pornographic literature involving children.

Ms. TOENSING. I think that you would find that money coming more from the original importation; after that people seem to share it free of charge. It also appears that there is a lot of personal photographing and use of children where you are not doing it through a magazine or through a commercial product, but through the person's own home movies or home photographs situation.

Senator GRASSLEY. The object of the Attorney General's report in section 7 of the legislation is to provide models for Federal and State legislation. You have testified that the department is already heavily involved in studying these issues. Two task forces have been funded and the Department of Justice is working actively with local prosecutors on the problem.

It seems to me that it would not be a difficult task to take all those studies that you are doing or are in the process of doing—and a lot of them are done, I understand—to pull them together with studies and recommendations that have been done by the private sector and to issue the Congress a report.

There will be, following your testimony, testimony from people on the local level that some of this State legislation that we have out there already may run into constitutional problems. And, therefore, it is the feeling of the cosponsors of this legislation that model recommendations from the Department of Justice would be very useful.

So a very simple question: From the standpoint of what you know that the Department has already done and what it has the resources to do in drawing together some things studied outside the Government, could that not be brought together in a report that could be issued and serve the purpose that the legislation intends?

Ms. TOENSING. Well, as I understand it, NIJ, the National Institute for Justice, is bringing together our task forces in this area, in the child abuse area, and is going to make recommendations. But I also stress again the laboratory of the District of Columbia where we not only have the Federal presence, but we have the local kinds of crimes, which would really be appropriate for the States because Federal crimes are not necessarily the assault crimes that the States have to deal with.

I endorse that as an area where the committee might want to look and talk with the people who are working in that area. And I hope that the D.C. City Council will pass some of these proposals that we need. For example, the bail statute was passed by Congress back in the days when Congress passed many of the laws for the District. It was a wonderful area for the constitutionality of that bail law to be tested. By the time Congress passed the bail law for all the Federal system last fall we already knew that it was going to pass constitutional muster.

Senator GRASSLEY. Are you saying in your reference to the task force, and what they are going to be doing, that it would fill the need that we suggest in our legislation of asking the Justice Department to study and make recommendations?

Ms. TOENSING. It certainly appears that it would, Mr. Chairman, in that we could work with your staff and make sure that we are addressing the concerns that you have.

Senator GRASSLEY. It is possible that it could if they have not gone down the road too far. And there could be dialog between my office and other cosponsors and your office. It could be possible that it might serve that purpose. I would not want to say categorically, but I appreciate that there might be something there that we have overlooked, and obviously we would not want a duplication of effort. So let us follow up on that.

On another point, in regard to background checks, in the Attorney General's 1984 Task Force on Family Violence, it was recommended that the criminal history background checks be required on people who work for child care facilities that receive Federal funds.

Is this policy still recommended by the Department of Justice?

Ms. TOENSING. We have a problem, and the chairman, I am sure, is aware of the regulation that the FBI has which says that if the arrest is over a year old and there has been no disposition that the arrest record cannot be disseminated. Would you like for me to address that?

Senator GRASSLEY. I have that as a point that I want to make later on, but I guess I still stand by my original point. Is this policy that was in the Attorney General's 1984 Task Force on Family Violence, requiring people that work for child care facilities that receive Federal funds to have background checks?

Ms. TOENSING. Yes.

Senator GRASSLEY. You are still recommending that. Could you tell us how many State background check plans under Public Law 98-473 have been approved by the Attorney General?

Ms. TOENSING. I could not tell you that. Let me see if——

Senator GRASSLEY. OK. If your staff can—otherwise I would ask you to submit it in writing. I would also ask you whether there are any pending for approval.

Ms. TOENSING. Mr. Chairman, excuse me. I just want to make sure I have the question correct so I can get you the information. Is that Senator Specter's request, that the Congress passed a bill that said that if you are going to get funding for child care services, then you have to pass a bill asking——

Senator GRASSLEY. It is Senator DeConcini from Arizona. It is his amendment.

Ms. TOENSING. I will have someone call your staff and get the facts. I want to make sure we get you the right information.

Senator GRASSLEY. Now, the point that you asked me if I wanted you to address, I think it would be appropriate for my question. A serious problem involved in background checks is the nondissemination of arrest records over 1 year old that have no disposition. In a hearing before this subcommittee last year on April 11, 1984 Mr. Melvin Mercer, who is Chief of the Recording and Posting Sections within the FBI Identification Division, seemed to indicate that this dissemination policy was outdated and should be changed.

What is the Department's view on this issue? What is the policy behind it? And is it justified, given that it takes up to 5 or so years to dispose of some of these cases?

Ms. TOENSING. As I read the history of this, Mr. Chairman, from our Watergate Church Committee days and the response of Government in those times, it seemed to me that there were many proposals before the Congress that were really going to restrict severely what the FBI disseminated. In fact, I think at one time there was a proposal that there could be no dissemination whatsoever. And so it appears that in response to that kind of furor on the Hill that the Bureau passed these regulations that said no dissemination if no disposition after 1 year. That is why that regulation is there.

The problem is that as soon as we think about changing them there are other people in the Senate and more particularly in the House who say if you touch a hair on those regulations we are really going to restrict you. And so we are kind of at the mercy of them. We would love a resolution from the two Houses telling us that we do not have to abide by this kind of regulation. The Department would like to disseminate this information, and there are all kinds of practical problems with that kind of restriction in that many cases are not disposed of after a year.

Many times when the FBI goes back to look at these records, there is not "disposition" on it because the locality has not sent in a disposition. So there are all kinds of problems with it. We would welcome any support you all would like to give us.

I would like to mention one other area in this regard. We have just talked about dissemination, but the Chairman should be aware that the District of Columbia is alone of all major jurisdictions in not voluntarily providing the FBI with the arrest fingerprints when arrests are made in the District of Columbia.

And although the Department of Justice through the U.S. attorney's office wrote the city almost a year ago and requested movement in this area—and I know Mr. John Walsh, your next witness, is aware of this, too, and he may want to address it—we have had not even a response from the city in this area.

Senator GRASSLEY. The Senator from Kentucky, if you are under a tight time constraint, I would defer to you.

Senator MCCONNELL. Go ahead, Mr. Chairman. I came over in particular, with all due respect to the current witness, to hear from John Walsh. I am going to be here for awhile. So, go right ahead.

Senator GRASSLEY. Thank you. Now, on the FBI crime files, evidently the Department sees a problem of criminal file updating as a local one for States, I presume. Is there any way that the FBI can play a role, such as requesting in some formalized way with some sort of insinuation that it must be done, that certain information be added that we would like to get into that file?

Ms. **Toensing**. I would like to ask Mr. Mercer from the FBI to answer that question.

Senator **Grassley**. Would you please identify yourself. Feel free to answer. I would appreciate it very much.

Mr. **Mercer**. Senator, I am Melvin Mercer with the FBI Identification Division. I am in charge of the records section there. With regard to your question, the FBI criminal history system is based upon voluntary submission of arrest information from local and Federal agencies. We have through the years done everything possible to try to encourage the submission and followup of the arrest fingerprint cards that come to us with the final disposition. I would say in the last 10 years the disposition of submission followups have increased tremendously. I cannot give you exactly a percentage, but with the more recent arrests, the courts are getting into it at the local level. The records are being automated. Disposition followup programs are being initiated in the States, and in turn that results in the dispositions being forwarded to the FBI.

Senator **Grassley**. So, you feel that there is some progress being made, but that is the point.

Mr. **Mercer**. I think there is a tremendous amount of progress that has been made in the last few years. The emphasis put on the inaccuracy of the records as far as them not being complete; the States have taken initiatives on their own and initiated their own followup procedures.

Senator **Grassley**. Well, then maybe I should ask you while you are there, that on the statistical side of the issue, the Department of Justice itself has recommended adding elements such as the age and the relationship of the victim to the perpetrator to the uniform crime reports. If given time to set up the system and allowing the use of other data bases, can such a system be set up?

Mr. **Mercer**. I think that relates mainly to the section 8 part of your bill.

Senator **Grassley**. Yes; it does.

Mr. **Mercer**. Currently, the UCR, as I understand it—that is not my particular area of expertise. But the UCR is moving to redesign that whole program and the type of information as to the age of the victim, the relationship to the subject who committed the violation; all that type of information is expected to be captured in some UCR type data.

Now, that type of information can be captured and handled very easily through the formats that are planned on UCR. However, to extend that into the NCIC and into the identification records, I think would not be wise, mainly because our information comes from the policeman on the street who makes the arrest, fills out that fingerprint card, and gives us the charge information, like assault, rape, and murder. And through the years he has never been trained to indicate that the murder involved the child or the relationship of the person who committed the murder to the victim.

And what would happen if we were required to get that information and the cards came in and that information was not reflected? I think in the long run we might have less information on file at the national level with additional requirements on the identification division or arrest records; whereas, UCR will be designed to collect that type of information.

Senator **Grassley**. Ms. Toensing, could you comment on the Department's view of extending the statute of limitations in these cases to begin at the age of majority.

Ms. **Toensing**. We do not have any problems with that. Mr. Chairman, that would be fine. I have a few more crimes you might want to extend the statute on.

Senator **Grassley**. I have three questions I am going to submit in writing on parental kidnaping that we would like to have your views on.

Let me say once again, thank you very much, but more importantly to recognize for the second time your offer to work with us on some things dealing directly with this legislation and also as a reminder of the work of that task force that you think might be reporting in the areas that we have some interest in. Thank you.

Ms. **Toensing**. Thank you.

[Prepared statement and responses of Ms. Toensing to questions from Senator Grassley follow:]

PREPARED STATEMENT OF VICTORIA TOENSING

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE,

My name is Victoria Toensing. I am a Deputy Assistant Attorney General of the Criminal Division. I am pleased to appear today to discuss S. 985. This bill contains numerous provisions aimed at providing greater protection for the victims of child abuse. I will also make reference to several other bills identical to various provisions of S. 985.

Child abuse is an extremely heinous offense. We in the Department are enthusiastic about the improvements which were made to the child pornography statutes in 1984. We are pleased to be able to support one provision of S. 985. The other provisions of this bill, however, are not appropriate in the Department's view, and could well be counter-productive. At this time, I will outline the Department's views with regard to each section of S. 985.

Section 2

Section two of S. 985 sets forth Congressional findings. We cannot verify the accuracy of finding one, which states that child exploitation is a multi-million dollar industry infiltrated by organized crime. There are some indications that some major pornographers may include child pornography as a small portion of their distribution activities. However, our experience to date does not support a conclusion that organized crime is extensively involved in child pornography. Moreover, with the exception of one major commercial distributor the Department convicted in Los Angeles, the child pornographers we have encountered within the United States have been traders or very small-scale dealers who realize little profit from their tawdry business. Similarly, we are not aware of evidence demonstrating either significant organized crime involvement or substantial income in connection with the interstate transportation of children for prostitution.

We also question finding three, which states that the federal government lacks sufficient enforcement tools to deal with child exploitation. Congress amended the child pornography statutes, 18 U.S.C. 2251-2255, in May of 1984, by deleting the requirement of commerciality and the requirement that distributed material be "obscene," as well as making certain other improvements. As amended, these statutes are proving very effective as a basis for prosecuting those who exploit children through child pornography. In fact, more indictments have been returned in the year and a third since the amendments were enacted in 1984 than during the prior six and one-half years.

Finally, we cannot endorse in an unqualified fashion finding seven, which postulates the desirability of mandatory sentences for kidnaping of children, and finding eight, which states that current rules of evidence and investigative procedures are inadequate to deal with child witnesses. I will have additional comments concerning these two matters at a later point.

Sections 3 and 4

Section three adds offenses relating to the production and dissemination of child pornography as predicate offenses to the RICO statute, 18 U.S.C. 1961-1968, and section four authorizes civil RICO suits on behalf of victims of such offenses. These provisions are identical to those found in S. 625. The Department supports amendment of the RICO statute to include violations of the child pornography statutes as predicate offenses. Sexual exploitation of children is a particularly repugnant offense. Were such conduct to be engaged in as a pattern of racketeering activity it would become even more dangerous and odious. Use of RICO's unique and powerful criminal provisions against such instances of aggravated conduct would be particularly appropriate. As I stated earlier, it has not been our experience to find such patterns of activity in the child pornography area. However, we endorse the concept of having the RICO statute available should such conduct be uncovered in future investigations.

We have serious reservations concerning the treble-damages provision in section four. A treble-damages suit under 18 U.S.C. 1964(c) is presently available to any person who is injured "in his business or property" by any RICO violation. Section five would permit recovery by a person who is injured "personally" by a RICO violation, if the injury results from an act indictable under the child pornography statutes.

In our view, this provision could lead to confusion in judicial interpretations. There has been considerable controversy surrounding the recent profusion of RICO damages actions. Two aspects of the controversy which were the subject of conflicting lower court decisions, i.e., whether a particular "racketeering enterprise injury" apart from injury caused by the predicate act must be shown to justify recovery and whether a civil defendant must have been convicted of a criminal violation of RICO before a civil suit can be brought have only recently been resolved by a Supreme Court decison. 1/ Other questions have arisen, including whether the statute has any efficacy in deterring organized crime from penetrating legitimate businesses, whether the definition of "pattern of racketeering activity" needs to be tightened up, and whether section 1964(c) should be entirely eliminated because of its potential for encouraging unfounded harrasment litigation. Assistant Attorney General Stephen S. Trott of the Criminal Division testified at length concerning these matters before the full Senate Judiciary Committee on May 20 of this year.

The proposed amendment in section four would add a new aspect to this controversy, in that it would permit a recovery for a personal injury, as well as for an injury to the plaintiff's business or property. I would point out that there are present predicate offenses for RICO, such as murder,

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1/ Sedima, S.P.R.L. v. Imrex Company, Inc., ____ U.S. ____, 105 S.Ct. 3275 (1985).

kidnaping and white slave traffic, which by their heinous nature might also be appropriate bases for recovery for personal injury. We do not believe the RICO statute is the appropriate place to create a remedy for such injuries. Victim compensation is an extremely important concept which is strongly supported by this Administration. For this reason, it is important that victim compensation principles be developed in an organized, coherent fashion. Appropriate statutory vehicles for the implementation of effective victim compensation remedies already exist in the restitution provisions of the Victim and Witness Protection Act, 18 U.S.C. 3579, and in the Victims of Crime Act of 1984, Public Law 98-473, Title II, Ch. XIV. Other remedies are available through civil lawsuits pursuant to state law. The RICO statute was primarily intended as a criminal law enforcement tool and is crucial to our overall concerns in organized crime prosecutions. We are concerned that the proposed amendment may introduce, as I noted above, a new element of controversy and undercut the statute's effectiveness. Since other statutes are available, as note above, for the development of compensation programs for victims in these types of cases, we oppose this amendment.

Section 5

Section five of the bill, which is identical to S. 1011, would amend 18 U.S.C. 1201 in two respects. Section 1201 makes it a criminal offense to kidnap and hold for ransom, reward or otherwise any person where there is a basis, set forth in the statute, for federal jurisidiction. An exception is provided for parental kidnaping. The penalty is imprisonment for any term of years or for life. Section five would (1) delete the parental kidnaping exception and (2) provide for mandatory life imprisonment if the victim is under the age of 18, and a possible death penalty if the minor victim is killed.

The Department of Justice opposes the deletion of the parental kidnaping exception. Parental kidnaping is a serious matter. However, we believe that these cases are best handled by local and state authorities since they are the authorities normally involved in family dispute and custody matters. If local authorities require federal assistance, and there is evidence that the kidnaping parent has taken the child across state lines, authority for federal involvement already exists. In such cases, the Federal Bureau of Investigation has jurisdiction under 18 U.S.C. 1073 (flight to avoid prosecution or giving testimony) to search for and apprehend the parent on behalf of the State. While parental kidnaping is a grievous offense, it is a different kind of crime and should not be treated in the same fashion as other acts of kidnaping. In the Department's view the current authority is the proper role for the federal government in these matters.

The proposed mandatory life sentence and death penalty provisions would apply to all kidnaping of victims under 18, including parental kidnapers. In the Department's judgment, these provisions are particularly inappropriate in parental kidnaping situations. Either penalty could very well be considered excessive depending upon the circumstances surrounding the child custody controversy. Further, the Department generally opposes mandatory life sentences because they deprive the court of the discretion to determine appropriate sentences in the specific cases before it. Moreover, new sentencing guidelines for all federal crimes will be devised pursuant to Chapter Two of the Comprehensive Crime Control Act of 1984, P.L. 98-473, and the Department believes that it would be preferable to permit the sentencing commission established under that Act to impose appropriate narrow sentencing ranges based on the offense and pertinent offender characteristics.

Finally, with regard to the death penalty provision, we do not oppose such a penalty in the case of kidnaping (other than parental kidnaping), but the Department supports much broader death penalty legislation, such as S. 239, which would cover many serious offenses.

Section 6

Section six is identical to S. 1012. This section would amend 18 U.S.C. 2251 and 2252 to provide a mandatory minimum penalty of five years for recidivists. It would also prohibit suspended sentences or sentences to probation, or release on parole before expiration of the five year minimum for such defendants. The Department of Justice supports substantial penalties for offenses involving the sexual exploitation of children. However, for the reasons set forth in the previous paragraph, the Department opposes this provision and believes that the new sentencing commission should be permitted to develop guidelines. Should Congress, nevertheless, decide to enact this provision, two minor corrections should be made. The reference to subsection "(c)" of section 2252 should be changed to "(b)," as there is no subsection (c). The term "person" should be changed to "individual" to conform to the present language of sections 2251 and 2252.

Section 7

Section seven is identical to S. 1010. This section requires the Attorney General to report within a year to Congress detailing possible changes in the Federal Rules and other courtroom, prosecutorial and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation. The Department of Justice is entirely in sympathy with the concerns reflected in section seven. The use of child witnesses involves many special considerations, and the Department is already heavily involved in studying these issues. The Department funded two task forces which have submitted recommendations in this area, and the National Institute of Justice will issue a report within the next couple months analyzing these recommendations. These studies involved many of the areas referred to in section seven. The Department is working actively with the National District Attorneys Association and the National Association of Attorneys

General to provide resource material and training for local prosecutors, and the Bureau of Justice Statistics is currently funding demonstration projects in six local prosecutor's office.

Handling child witnesses is a daily problem for state and local prosecutors who deal with statutes involving sexual molestation, rape and the like. There are few such statutes in federal criminal law, and we are not aware of significant problems involving the use of child witnesses in federal cases. For instance, in child pornography cases the government has not found it necessary to rely on child witnesses to establish the elements of the offense. One exception to this characterization of federal prosecution is in the District of Columbia. Here the United States Attorney functions also as a local prosecuting attorney, and many cases involving the use of child witnesses arise. A special program for working with child witnesses has been developed by that office, and I would like to describe it in some detail.

First, felony cases involving sexual offenses against minors are viewed as most serious cases and the most experienced prosecutors are assigned to these cases. A "vertical processing system" is employed, whereby the same prosecutor is assigned to the case from initial intake through trial. This avoids the additional trauma for the child having to repeat his story to several successive strangers.

Second, felony child sexual offense cases are placed on a special "felony one calendar" along with first degree murder, rape and multi-defendant cases. Three judges are assigned to hear only this short calendar of cases. This ensures an early trial date and rapid processing of these cases.

Third, federal prosecutors who handle these cases work closely with the child support services personnel at Children's Hospital in order to learn the best techniques for dealing with child witnesses. This includes lectures by psychologists and other professionals, instructions in interview techniques such as the use of anatomically correct dolls, and the like.

Finally, legislation is pending before the District of Columbia City Council which would allow the videotaping of children's testimony and the use of closed circuit television. The United States Attorney's Office is studying this proposal and will make a recommendation to the City Council.

What these studies have revealed is that the issue of the use of child witnesses is in a very dynamic state at the present time. Many experiments are being conducted at the state and local levels and much research is being done. The states are proving to be very useful laboratories in the development of techniques for dealing with child witness. We believe it would be extremely useful to await the results of these diverse ongoing efforts before moving ahead to study the question of what, if anything, needs to be done at the federal level. Some elements within the Department are working on model state statutes, and this drafting experience should prove helpful should we decide that changes in federal law or the federal rules are appropriate. If it is concluded that changes in the rules are needed and are constitutionally feasible, taking into account a defendant's right to confrontation and a public trial, the Department would prefer to proceed in the historic and traditional fashion under 18 U.S.C. 3771. This statute empowers the Supreme Court to propose changes to the Federal Rules, which go into effect unless they are rejected by the Congress. Appropriate rule changes are recommended to the Court by the Advisory Committee on Criminal Rules. The Assistant Attorney General in charge of the Criminal Division is a permanent member of this Committee, and the Criminal Division has long played an active role in its work. Appropriate changes in investigative procedures will be adopted by the Department as a need is shown.

For all of these reasons, we would urge that legislative action at this time would be premature, and the Department, therefore, opposes section seven.

Section 8

Section eight of the bill is identical to S. 1013. 2/ This section requires the Attorney General to modify the "classification system" used in the Interstate Identification Index of the FBI's National Crime Information Center (NCIC) and by the FBI's Identification Division with respect to offenses involving sexual exploitation of children. It would require including the age of the victim and the relationship of the victim to the offender and use of a uniform definition of "child." This proposal reflects a certain misunderstanding concerning the nature of the NCIC and the information it collects. Therefore, the Department must oppose this section as unworkable. The NCIC does not utilize a "classification system." The Index, which is a joint federal-state project, contains only the names and other "identifiers" of individuals with criminal records. The Index does not reflect any information concerning the individual's crime. The Index is used only as a "pointer" to direct the inquirer to the appropriate state or local agency, or to the FBI Identification Division, where a criminal record on an individual is maintained. The FBI Identification Division is also intended to be a "pointer" to the criminal justice agency where the more detailed information is held. It is not intended to be a repository of the detailed record.

Information in the FBI's Identification Division files in most cases consists only of a description of the charge (e.g., sexual assault, rape, indecent act, etc.) and does not include information pertaining to the victim's age or relationship to the accused. It is important to understand that a large proportion

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2/ Section five of S. 140 contains an identical provision and would similarly modify the Uniform Crime Reports, a separate FPI recordkeeping system. Section five was added in committee. The bill was reported out by the Committee on Labor and Human Resources on July 31, 1985, was passed by the Senate on August 1, 1985, and has not yet been referred to the House of Representatives. The Department was not asked to comment on the committee print of S. 140.

of this information is provided on a voluntary basis by state and local criminal justice agencies. Hence, the Identification Division can only make available information which local authorities have elected to furnish. Similarly, much of the information in the NCIC Index is derived from state and local sources. Therefore, proposed section eight would not be effective in producing the desired information.

Given the nature of the information in the NCIC and Identification Division records systems, the manner in which it is obtained, and the purpose for which it is collected, assignment of the task of collecting detailed information on juvenile victims to these systems is inappropriate.

I understand that FBI representatives met with Subcommittee staff on September 9 to explain further the Bureau's concerns with this section. We appreciate the opportunity to work with the Subcommittee and remain available to discuss this issue in greater detail, if necessary.

Section 9

Section nine would enlarge the membership of the Advisory Board on Missing Children, created by section 660 of the Comprehensive Crime Control Act of 1984, to include a parent of a missing child to be selected from the State of Iowa. The Advisory Board on Missing Children was sworn in by the Attorney General on March 8, 1985, and comprises nine individuals meeting the criteria set forth in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The addition of another member position at this late date would have an unsettling impact on the Board and is an inappropriate intrusion into Executive Branch procedures. We fail to understand the necessity for this amendment, and the Department opposes it.

The Department of Justice is deeply concerned about the serious problem of child abuse and is very interested in working closely with the Congress to devise meaningful and effective legislation to deal with this heinous offense.

RESPONSES OF VICTORIA TOENSING TO QUESTIONS FROM SENATOR GRASSLEY

1(a) You testified that changing the regulation concerning the non-dissemination of over one-year old arrest records that have not been disposed of, would be opposed by members of the House of Representatives.

Isn't this an internal regulation that can be changed without Congressional involvement or approval?

(b) If so, why can't or why won't it be changed, given ample evidence that it is a problem?

2 You stated that you were aware of the existence of pedophilic organizations such as the North American Man-Boy Love Association (NAMBLA).

I have a copy of one of NAMBLA's publications (copy attached to questions) that was obtained by Mr. John Walsh. In this bulletin are names and addresses of this organization's headquarters and mailing office.

Since the members of this organization advocate and actually commit sex crimes against children, why can't these names and addresses be investigated, and the offices closed down?

3(a) Could you tell us the Department's general view on the issue of FBI involvement in non-custodial parental kidnapping cases?

(b) What are the prerequisites for FBI intervention in these cases?

(c) Does some kind of harm to the kidnapped child have to be shown before the FBI will intervene?

4(a) Could you tell me how many state background check plans under P.L. 98-473, which grants federal funds to the states under Title 20, have been approved by the Attorney General?

(b) Are any plans pending for approval?

(c) Why, in the Department's view, have so few states elected to enact plans under P.L. 98-473?

ANSWERS TO QUESTIONS

Question 1

Technically, the Department does not need congressional approval to change its regulation to permit the dissemination of arrest records over one year old where there has been no disposition of the charges. The fact that a record does not indicate disposition does not mean that, in fact, there has not been a disposition of a case. Many times the jurisdiction fails to notify the Bureau of a disposition. However, some Members of Congress in the past have been adamantly opposed to releasing for licensing and employment purposes arrest records over a year old which do not indicate a disposition. As we continue to consider this proposal, we would welcome any steps your Committee may wish to take to manifest the views of Committee Members on this issue.

On a related matter, I testified that the FBI is able to obtain arrest fingerprint cards from all major jurisdictions except for the District of Columbia. I stated that the D.C. Metropolitan Police Department's refusal to submit these records is based upon Utz v. Cullinane, 520 F.2d 467 (D.C. Cir. 1975), wherein the Court interpreted the "Duncan Ordinance," which controls the dissemination of arrest records in the District of Columbia, to preclude these D.C. criminal arrest records from being used for certain licensing and employment purposes. As a result, this information is not available to the FBI, even for law enforcement purposes. On October 23, 1984, and again on July 10, 1985, the United States Attorney for the District of Columbia wrote to city officials urging that this problem with the "Duncan Ordinance" be addressed. There has been no response. Therefore, the Department requests the assistance of Congress in rectifying this problem so that these valuable records can be made available to the FBI.

Question 2

To the extent that organizations such as the North America Man-Boy Love Association (NAMBLA) are engaged merely in the advocacy of ideas, their activities are protected by the First Amendment, no matter how offensive their ideas may be to the majority. Please be assured that the Department of Justice is well aware of the activities of NAMBLA. If NAMBLA or any of its officers or members violate any applicable federal statutes they will be prosecuted aggressively should the facts warrant.

Question 3

Generally, it is the Department's view that family law matters such as child custody disputes are primarily the responsibility of the various states. FBI assistance is available in many parental abduction cases under the unlawful flight to avoid prosecution statute, 18 U.S.C. 1073, which was enacted to assist the states in the location and apprehension of fugitives from justice who have moved in interstate commerce to avoid prosecution for a felony.

State law enforcement agencies may enter their outstanding parental abduction warrants into the FBI-operated National Crime Information Center (NCIC) without regard to the grade of the offenses or evidence of interstate flight. In addition, the name and identifying data of any missing child may be entered into the NCIC missing persons file. Normally, such entries are made by local law enforcement agencies. However, during consideration of the Missing Children Act the FBI agreed to enter a missing child's identity into the NCIC missing persons file at the request of a parent if local authorities refuse to do so.

A United States Attorney may authorize the FBI to apply to a federal judge or magistrate for a warrant under this statute when requested by an appropriate state law enforcement official. The state official must supply evidence that there is probable cause to believe that the person charged with a felony, whose whereabouts are unknown, fled the state with intent to avoid prosecution for the offense, and must commit the state to extraditing the fugitive if located. The resulting warrant authorizes only the arrest of the person named in the warrant; it does not authorize the FBI to take abducted children into custody or to return them to the state from which they were removed. As a practical matter, however, the apprehension of the offending parent normally facilitates the custodial parent's prompt recovery of his or her child.

The kidnapped child need not be harmed before the Bureau will intervene. In the past the Department has had policy limitations on the use of the unlawful flight statute in child custody related felony cases. All such policy limitations were suspended in December 1982. As a result, child custody related felonies now are handled on the same basis as other unlawful flight cases.

Question 4

Section 401 of Public Law 98-473 provided that a state's allotment of Title XX funds would be reduced if the state did not have a law in place by September 30, 1985, which would require criminal record checks pursuant to Public Law 92-544 for certain employees whose jobs bring them in contact with children. The Department of Health and Human Services, rather than the Attorney General, has the responsibility to determine which states have sufficiently met the requirements of Public Law 98-473 to enable them to obtain their full state allotment for fiscal year 1986 or 1987. To assist the Subcommittee, I am enclosing a list of twenty states which have enacted legislation which permits a criminal history check of FBI Identification Division records pursuant to Public Law 92-544 for employees who may have contact with children. The criminal history check program pursuant to Public Law 92-544 has been in effect for a number of years. It exists separate and apart from the HHS program under Public Law 98-473, and the Department cannot readily determine which of these statutes existed before the passage of Public Law 98-473. As of October 17, 1985, no additional state laws providing for access to FBI records for child care purposes pursuant to Public Law 92-544 were pending approval in the Department. The Department is not in a position to speculate why the remaining thirty states do not have similar laws allowing access to FBI identification records pursuant to Public Law 92-544 for individuals who work with children.

STATE STATUTES RELATING TO CHILDREN QUALIFYING FOR CRIMINAL HISTORY RECORD CHECKS BY THE FBI IDENTIFICATION DIVISION

1. Alabama

    1. Employment or volunteers involving supervisory or disciplinary power over minors (H.941/Act #85-681)

        A. Public/private school system
        B. Public/private day-care/child-care facility
        C. Public/private domiciliary home/orphanage for children
        D. Public/private facilities providing care/treatment for mental, physical, emotional or rehabilitative conditions or diseases
        E. Persons who care for children in their home, home of the child, etc., on a regular day-to-day basis.

    2. Applicants for adoption or foster parents (H.940/Act #85-537)

2. Alaska

    1. Employment involving supervisory or disciplinary power over minors (AS 12.62.035)

        A. School districts
        B. Day-care centers
        C. Camp counselors
        D. Scout or club leaders
        E. Babysitters
        F. Etc.

    2. School bus driver permits (AS 13.08.015)

3. Arizona

    1. Applicants for day-care center licenses and employees of day-care centers (ARS 36-882 & 36-883.02)
    2. Employment of personnel for child-care in certified day-care homes (ARS 41-1964)
    3. Recipients of Federal child-care food program monies (ARS 46-321)
    4. Employment of personnel with the Arizona State School of the Deaf and Blind (ARS 15-1330)
    5. Preadoption Certificate (ARS 8-105)
    6. School bus drivers (SB 1111, Chapter 18, Section 28-414)

4. California

    1. Child-care and home finding agencies and foster homes (Welf and Inst Code 16018)

        A. Small/large family homes
        B. Family-day homes
        C. Group homes
        D. Social rehabilitation facility/center
        E. Day nursery
        F. Foster family home
        G. Home-finding agency
        H. Adoption proceedings (ccc, Section 226.55)

    2. School district employees (Educ C 13588)
    3. Marriage, family or child counselors (B & PC 17820)
    4. Trainees in the Youth Conservation Training Program (Pub Res C 4982)
    5. Teacher certificates (13173, 13174(1)), (Educ C 44340)
    6. Employees or volunteers involving supervisory or disciplinary power over minors (P C 11105.2)
    7. Employees of private schools (CEC 44237)

5. Connecticut

    1. Care or treatment of children including adoption or foster parents (Chapter 961a, Section 54, 142K)

6. Florida

    1. Child-care facility, family day-care home, family foster home, residential child-caring agency, child-placing agency, and summer or recreation camp - Owners, operators, personnel and volunteers (FS, Chapters 402 and 409)
    2. Mental health facilities and programs providing care for children - Directors, professional clinicians, staff members and volunteers (FS, Chapter 394)
    3. Day-care or residential facility caretakers providing treatment to retarded or developmentally disabled individuals (children or adults) (FS, Chapter 393)
    4. Treatment resource personnel including program directors, staff, volunteers and foster parents providing alcohol/drug abuse treatment for minors (FS, Chapters 396 and 397)

7. Georgia

    1. Licensing of directors and employees of personal-care homes for children (OCGA 31-7-254)
    2. Licensing of directors and employees of child-care centers (OCGA 49-5-64)
    3. School bus drivers (SB 374)

8. Hawaii

    1. Operators and employees of child-care institutions, child-placing organizations and foster boarding homes (HRS, Chapter 346)

9. Illinois
    1. Child-care license (IS, Chapter 23, Section 2214)
    2. School district employees (IS, Chapter 122, Sections 10-21.9 & 34-18.5)
10. Maryland
    1. Providers of family day-care homes for children (Art. 5-551 (c)(iii)
11. Minnesota
    1. Operate day-care, residential facility, and foster-care homes (Section 245.783, Sub 3)
    2. Persons operating continuing care facilities (80D.03)
12. Missouri
    1. Child-care providers and employees - Pertains to day-care homes, day-care centers, residential care facilities for children, group homes, foster family homes and school employees (RSMO 210.800 - 210.840)
13. Nevada
    1. Licensing and employment of applicants and residents of child-care facilities (NRS 432A)
    2. Schoolteachers (NRS 391.020)
    3. Teacher Aids and auxiliary, nonprofessional personnel to assist certified personnel in instruction and supervision (NRS 391.100)
14. New Jersey
    1. Applicants for employment with psychiatric hospitals, memorial homes, schools for mentally retarded, youth and family services, etc., (NJSA 11:10-6.1)
    2. Child adoption and/or child abuse investigations (NJSA 9:3-47 & 48, 9:6-1, 30:4C-12)
    3. Drivers and substitute drivers of school buses (NJSA 18A:39-19)
15. New Mexico
    1. Operators, staff and employees of child-care facilities including juvenile detention, correction and treatment facilities (SB 247)
16. New York
    1. Employees of the New York City school system (Educ Law, Chapter 330, Section 2590, Sub 20)
    2. School bus employment
        - A. Drivers (NYV & TL, Section 509-cc & 509-d)
        - B. Attendants (NYV & TL, Section 1229-d)
17. Pennsylvania
    1. Child-care personnel - Pertains to child-care services applicants, foster parents, adoptive parents, family day-care providers and other child-care facilities or programs (Child Protective Services Law, Act 33 of 1985, Section 23.1)
    2. School employees (School Code of 1949, Act 34 of 1985, Section 111)

18. Rhode Island

    1. Licensing and employment of child-care personnel (RIGL 40-13.2 and 40-13-4)
    2. Licensing and employment of personnel providing educational services to children (RIGL 16-48.1 and 16-48-2)

19. Texas

    1. Child-care personnel (Texas Human Resources Code 22.006)

        A. Owners and employees of child-care facilities
        B. Residents of registered family homes providing care for children
        C. Persons providing adoptive- or foster-care for children
        D. Texas Department of Human Resources applicants and employees engaged in direct protective services for children
        E. Volunteers in the State of Texas with the Big Brothers/Big Sisters of America

    2. Applicants and employees of the Texas School for the Deaf who provide direct care for children (TEC 11.033)
    3. School district employment (HB 1752, Section 21.917)

20. West Virginia

    1. Licensing of applicants to operate child-welfare agencies/child-care facilities and employment of applicants responsible for the care of children including child-placing agencies, child-caring agencies, day-care centers, and foster family and family day-care (WVC 49-2B-8)

Senator GRASSLEY. The next witness I am going to call is John Walsh, and, of course, he is known to many people here in Congress because he has testified many times. He is chairman of the Adam Walsh Resource Center. That happens to be a nonprofit organization which was named after his son, who was tragically killed by a child kidnaper. In the aftermath of the death of their son Adam, John and his wife have turned their attention to the plight of other missing children in the United States.

The center, which works in the interest of missing, abused, and neglected children, is carrying out programs that include fingerprinting tens of thousands of school age youngsters, teaching safety with strangers, rules to young children, and placing trained observers in courtrooms where child molestation cases are being heard. Recently, the center presented its first two cracked gavel awards to judges who refused to allow child victims to testify in such cases.

And, of course, in 1982 John was named man of the year by the National Association of District Attorneys for his work in the area of child abduction and for work in legislation in this area.

Once again, thank you; I know you devote a lot of time up here on the Hill to help us with these problems. Thank you very much. Go ahead with your testimony.

STATEMENT OF JOHN WALSH, CHAIRMAN, ADAM WALSH RESOURCE CENTER

Mr. WALSH. Thank you very much, Senator Grassley, for having me. I have testified before this particular subcommittee on many occasions, and I would like to commend first Chairman Specter for all the work that he has done in changing Federal laws and introducing Federal laws for the protection of children, the Missing Children's bill, the Missing Children's Assistance bill, which created the National Center for Missing and Exploited Children, which I am a special consultant to, your work in the area of child pornography. I do not call child pornography "child pornography." Pornography intimates consent, such as in adult pornography, the consent of the person over 18 buying the adult pornography, the people appearing in it being over 18 and consenting to be in it.

Certainly, children have no ability to consent to be in child pornography. I call it child abuse. But also this subcommittee has been involved in the Violent Criminal Apprehension Program, tracking mobile and serial murders and in some FBI policy changes, being involved in noncustodial parental kidnaping and stranger abductions. I commend this subcommittee for their work. I commend you, Senator Grassley, particularly for your interest in this area and your concern and help for the Goshes, who are friends of mine, parents of a presently missing boy, Johnny Gosh and Eugene Martin, also from your home State. Those parents have gone through nightmares. The system has let them down, abused them continually as they continue to search for their son. And you have been a champion of those people.

I would also like to commend Senator McConnell, a long time friend of mine, a county judge from Kentucky who was instrumental in passing some of the most meaningful State legislation in the history of this country for children. We used some of the legislation that Senator McConnell introduced in Kentucky and lobbied for and got passed in our model legislation that the National Center for Missing and Exploited Children uses as we go around the country.

I, certainly, agree with certain individuals that the Federal Government cannot do everything and that sometimes too much government is too much. But there certainly is a Federal role in the area of exploitation of children. I have testified in 22 States this summer, many joint sessions. I have been all over this country in the last 4 years in every individual State.

I believe because of the discrepancies between State laws, such as in California where the stiffest penalty for kidnaping and sexual molestation of a child during the kidnaping is 7 years; in most States it is life imprisonment, but we all know life imprisonment is not life imprisonment.

In California, Kenneth Parnell, a long time convicted child molester stole Steven Stainer and kept him 7 years and sodomized and tortured him. When he got sick of Steven Stainer, he took Timothy White, a 6-year-old boy. Steven Stainer escaped with Timothy White. He said I do not want to see Timothy White go through the nightmare I did in Kenneth Parnell's basement for 7 years. Parnell had brainwashed Steven Stainer.

Steven Stainer is now in psychiatric counseling, suicidal. Kenneth Parnell was apprehended and served 3½ years. Steven Stainer had a very emotional press conference. He said what is going on in the State of California. Is there any justice for children. This man served less time in the State prison than he had me in the basement of his home.

There is an incredible discrepancy between State laws as they protect children. And again I reiterate there can be a Federal role. I have seen it in the Federal Government, mandating States to do certain things with the withholding of Federal funds, such as implementing the 55-mile-an-hour speed limit, the raising of the drinking age. I will be an old man before I see States pass meaningful legislation for children in every single State. What we have accomplished here has not translated down to the State level. Right now presently only 18 States have clearinghouses for missing children, for example. Only 18 States mandate all law enforcement enter cases of missing children in the National Crime Information Computer. So, we will never know how many missing children there are until every one of the States has a clearinghouse.

An example I bring to you of that, of the lack of State legislation: Jay Phillips, a 14-year-old boy missing from the State of Florida, finally apprehended his perpetrator in Nebraska by a State trooper who happened to have watched the movie "Adam" and was well aware of the importance of pictures through the media in finding children.

He had a funny suspicion about this man and this little boy that he had in his car. He ran the man's license plate through the NCIC. I commend that State trooper because a bullet popped up and said this man is wanted for suspected stranger abduction. The sad part of that story is that 6 months earlier that man was arrested in Louisiana and that man was arrested in Colorado and let go in both of those States with Jay Phillips in his custody. That point I use in the fact that I agree with what you are trying to do. I believe the Federal Government can impact the States and pass meaningful legislation for children, who really have no voice, and I have learned that the hardest way this summer lining up behind 500 and 600 paid lobbyists in each State capital, paid by the pharmaceutical industry, the road builders, the nursing industry, whatever, cornering State legislators and saying it is the end of the session. I donated $40,000 to your reelection campaign. Get my bill out, as I saw many of our child protection bills, particularly, for example, in the State of Georgia, which had 29 murdered children, 24 bills, such as some of the things that you are talking about in this bill, fail miserably.

And I was told by Georgia legislators our emphasis this year was on education and told publicly by two Georgia legislators, Mr. Walsh, you do not seem to understand anything about southern politics. Those 29 murders in Atlanta was a black problem.

I do not think people can stand for that type of response from State legislators in 1985. Laws are not always the answer. Education, awareness, those are important, but prevention is a major factor, and these laws would implement some areas of prevention. I am going to speak in the interest of time today—although I would like to speak about the statute of limitations, the RICO statute, all the provisions of this bill; I would like to speak particularly about background checks. There seem to be a lot of misconceptions about background checks of individuals who work with children. I have heard them all over the country from the NEA, from state legislators to concerned parents to teachers, whomever.

No. 1, background checks are not a witch hunt, No. 2, they are not a violation of civil liberties, and, No. 3, the most important thing is there is legal precedent for background checks.

Every State in this Nation has at least 50 occupations that are mandated by State law to have a background check. You cannot be a hairdresser in 30 States; you cannot be a lawyer or a doctor or a policeman in 48 States. You cannot be a groom at a racetrack in any State that has paramutuel racetracking in the United States. You cannot work in a lottery. You cannot rub down a horse at a racetrack without a State and Federal background check.

New Jersey has the most number of background checks because of the Atlantic City casinos. You cannot deliver toilet paper products to the Atlantic City casinos without a State and Federal background check to show if you are a previously convicted felon.

But in most States in this country you can work as a teacher, day-care center operator, a foster parent or a big brother even though you are a convicted child murderer or child molester. Background checks do not show up your sexual preference, whether you have painted the high school red, whether you protested in the sixties. They simply show up your arrest record and whether you are a convicted felon. The Boy Scouts of American are involved right now with four multimillion dollar suits. When I was testifying before the Alaska Legislature, the citizen of the year of Alaska in 1977, the leading Boy Scout leader in that State was arrested and sentenced for 35 years for sexually molesting children. He was a previously convicted child molester who went to Alaska and changed his name and became a citizen in the community.

Big Brothers and Big Sisters, a national organization that works with abused children, children who have no fathers, have advocated around the country for background checks to be passed on the State level. I quote from some of their letters. After they had investigated and it was brought to their attention that the best way for someone who wanted to molest children would be to work with them as a volunteer, they kept records of sexual assaults on boys in a 1-year period by Big Brothers: 87 sexual assaults by Big Brother volunteers in a 1-year period. I quote from their board of directors information about background checks.

> Legislators must weigh and balance the recognized rights of individual privacy, which include the presumption of innocence and due process of law, along with those risks that children have when we recognize the high rate of recidivism among sex offenders and their ability to go through the judicial system without obtaining a conviction for crimes committed.
>
> In this weighing and balancing process, we must remember in child abuse cases offenders are often not prosecuted at all because of the reluctance to have children appear as witnesses when they are even permitted to serve in that role; and, furthermore, when cases are prosecuted, they are usually for reduced charges and for suspended sentences with treatment as a condition of probation.

Foster parents: in the State of New Jersey, you do not need a State or Federal background check to be a foster parent. Yet when 10 NAMBLA members, the North American Man Boy Love Association that you mentioned earlier, distributes a newsletter throughout the country, the NAMBLA Bulletin, with pictures of men with small boys, articles such as the "Unicorn" in it, which is the unicorn by a 12-year-old faggot, letters from incarcerated repeat offenders and pedophiles talking about how to beat the system—when 10 NAMBLA members were arrested in upstate New York with 300 hard core video cassettes of child pornography, little boys in forced sex acts with adults, a list of people who were sending in for information in a manual called "How to Have Sex With a Child," the background of those individuals, I think, would startle this subcommittee. Not only were some of them city councilmen from Marietta, OH, a university professor from Stanford University in California, a neurologist from the Columbia Presbyterian Medical Center in New York City, but one was a chemist from New Jersey who was an approved foster parent, even though he was a previously convicted child molester; the State of New Jersey was allowing him to get abused and molested children.

I cannot think of a worse thing, to be a physically abused child and be assigned to a foster home where your foster parent uses you in child pornography because the State does not care enough to check the background of that individual.

The NAMBLA members, the Rene Guyon Society, which has a newsletter similar to NAMBLA, advocate sex with children. The slogan of the Rene Guyon Society is "Sex before eight or it's too late." They are better organized in most cases than the individual law enforcement entities in their area.

This is a letter to other NAMBLA members appearing in the NAMBLA bulletin, a repeat offender, presently incarcerated, talking about how easy it is to beat the system, how bad the statutes are for repeat offenders. He says, never confess to anything. Never say anything to a police officer, never plead guilty, never plea bargain, make no statements, and remain silent. Go for the jury trial. Go for the later appeal. Make the country pay all the expenses. Make the justice system employees work for their money, work for their conviction. Do not give it to them. Waste their time. Waste their resources. Waste their money. Unload your real property promptly to trusted friends or relatives so you can get a local public defender at county expense. County public defenders are practically useless, but you will not lose a bundle.

These individuals and these repeat offenders who work with children continually are better educated in the law than most prosecutors, most law enforcement individuals who pursue them.

Teachers: let us talk about background checks of teachers. There are a lot of misconceptions about background checks of teachers. The background checks bill in New Jersey was opposed by the teachers union in New Jersey even though the executive director of the Avondale Correctional Facility for Disordered Sex Offenders came forward and testified before me and said I have 25 disordered sex offenders right now that were involved in the school system in New Jersey here at Avondale.

Background checks of school teachers should have been passed 10 years ago. When the State of Florida passed background checks of school teachers, it was found out that there were 37 convicted felons in the State of Florida teaching school, 5 in one county.

I brought something to show you today that we did at the Adam Walsh Center, back when I testified before the Florida Legislature. We put together the sexual assaults by trust authority figures on children in a 4-month period. This book is full, every page, teachers, priests, social workers. I read from an editorial in St. Lucy County.

Senator **Grassley**. These are stories about teachers involved in sex with young people.

Mr. **Walsh**. Teachers, scoutmasters, pastors. There are so many in the 4-month period in this book, there were not enough pages to put in this book. It is the first time anyone had ever collected through newspaper clippings the offenses.

> After five teachers are accused or convicted of child molestation, one would think that the St. Lucy County school board and the administration would establish more than a cursory examination of applications for teaching positions in the county. Call it budget or call it an overworked staff or call it anything: the excuses pale in light of the number of children who face a lifetime of psychological problems from their traumatic encounters with teachers who should not be teaching.

Those men beat the system. That superintendent of schools in Florida fingerprinted those five men. He ran them through the State criminal files. The State of Florida has 600,000 criminal files.

The State of Florida at that time did not permit him to put them through the Federal files, the NCIC or the FBI records of convicted felons. Or that superintendent did not know he could do it. Those men, none of them were convicted in the State of Florida. They were all convicted in another State. Four had been convicted of child pornography in different States and the child murderer had been convicted in Illinois and served 10 years in the Illinois prisons for murdering a child.

They beat the system. I had a teacher testify with me before the Florida Legislature, and I am going to paraphrase some of his words in the interest of time. He said this is not a witch hunt. He said the teaching profession is a good profession. He said I spent my whole life trying to be a teacher. We are underpaid. We take a lot of flack.

He said:

> But it makes sense to me that people who want to molest children and get their trust should work with them. We teach children their whole lives to trust authority figures, but yet we put them in the hands of convicted molesters and people who should not be authority figures.

He said, "It makes sense; if you want to ride a horse, you go to a stable. If you want to molest a child, you work with them." And he said, "Even though some of my colleagues oppose this," he says, "I think we should be mandated to police our own profession." He said, "We won't do it, so I believe in this bill." He said, "But I have a very vested interest. I teach high school, and I am a phys ed teacher." He says, "I have a 6-year-old daughter." He said, "If the man who is teaching my 6-year-old daughter 7 hours a day cannot pass a background check, then he should not be a teacher. I am concerned with who has my child 6 hours a day."

He said, "If that man cannot pass that background check, he can be a State legislator, he can be an architect, but he should not be working with children."

I think that sums up what and why background checks work. They will not catch everyone. Lots of child molesters have never been arrested. Lots of them certainly have had adjudication withheld where they plead guilty to sexual offenses and no criminal records have followed them State to State, but if it catches one previously convicted child molester from getting into foster care, day care working, Big Brothers, Boy Scouts, whatever, it will certainly spare the lives of one, 10, whatever children, and you cannot put any money on that.

And I have said before this committee many, many times, education, protecting the children early, prevention is important. There is a chain we must break in this country, and that chain is the chain of the molester turning out new molesters; the child, a victim of incest, sexual or physical abuse, wherever it be, goes on to become the juvenile delinquent who hits the streets, who goes into the system and becomes the early criminal, who later on gets out of the system and becomes the mobile or serial murderer, the repeat offender.

He will come back because this country and this system did not protect him when he was little; he will come back to rape your wife, molest your child, and turn out new molesters. We need to break that chain. To me, it is all related, the exploitation of children, whether they are missing, whether they are noncustodially, parentally abducted, whether they are runaways, whether they are throwaways, whether they are physically abused or sexually molested; they are being preyed upon by adults, and adults have not done a good job in this country of protecting its children. It is a country of 50 little feudal kingdoms. I have been in every one of those feudal kingdoms. The laws in California are horrible. The laws in Kentucky are good. But that does not help the Kentucky child when that repeat offender gets out in California and decides to come to Kentucky and molest Mitch McConnell's daughters. I have seen that repeatedly. The Tuscadero Medical Center in California has released seven disordered sex offenders that have gone on to murder children in other States.

The system does not work. If we can prohibit one child molester from working with children, then we have done something for those children that were the potential victims.

I wish, in the interest of time, I had a chance to talk about all the experiences, all the things I have learned in the State legislatures and all that I have learned in the last 4 years, but I wanted to speak specifically to this aspect of the bill. Yes, you should work with the Justice Department. Yes, we have been working with the FBI. Yes, there should be model State legislation, but there is not in many States, and it is a long time in coming and the sooner the better, as State legislatures are looking for that direction.

But I still believe that the Federal Government has a role and you can cut through a lot of bureaucracy in the individual States and protect children earlier and reduce the number of victims by certain parts of this bill. It basically is a good bill, and I commend you for having the guts to deal with this bill because these are tough subjects that are in some areas controversial.

I thank you for the opportunity.

[Material for the record follows:]

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VOICE OF THE NORTH AMERICAN MAN/BOY LOVE ASSOCIATION

VOGUE - bambini

DR. BRONGERSMA IN AMERICA ______ 3

THE CASE OF AMY __ 2

San Francisco NAMBLA Conference

PLEASE SUBMIT YOUR POSITION PAPERS NOW! YOUR POSITION PAPER FOR THE FALL 1984 NAMBLA CONFERENCE IS NEEDED. WRITE ON THE SUBJECT YOU THINK IS MOST IMPORTANT. PERHAPS THERE'S A SUBJECT NAMBLA HAS OVERLOOKED? LET NAMBLA KNOW. SPEAK OUT!

News Analysis

THE CASE OF AMY

By David Thorstad

Remember Amy? She was the 12-year-old Fairfield, California, girl whose victimization at the hands of the state authorities captured public attention for a few days last January.

Could anyone not be moved by her case? It showed graphically how far removed the official approach to "child molestation" is from the state's vaunted concern for the child. But it also illustrated the double standard of the media, who summoned sympathy they can't seem to muster in cases of consensual man/boy love.

Amy was "sexually fondled" by her stepfather, a physician with a practice in nearby Vacaville. Last summer the stepfather, the mother, and Amy voluntarily sought counseling, and the counselor revealed the alleged molestation to the authorities, as required by a 1980 California law. (All states require therapists to report known or suspected "abuse" to child protection agencies. California is one of 12 states that require those agencies to report to law enforcement officials. New York and other states allow this, while not requiring it). The District Attorney's office filed a felony charge against the stepfather and placed Amy in the custody of her maternal grandparents. The stepfather admitted the fondling, but pleaded not guilty when charged. When Amy refused to testify against him, she was placed in solitary confinement in the Solano County Juvenile Hall on December 30, alledgedly to prevent her from running away from a foster home and to compel her testimony. She repeatedly asked from the witness stand to talk to a lawyer. Without her corroborative testimony, the state could not convict. So Amy was confined for nine days in a four-by-eight-foot room with only a bed and a light and, for a few days, a TV set. Six times she refused to testify, even though she knew that her refusal was illegal. Finally, on January 9, Municipal Court Judge John DeRonde dismissed the case, an admission of defeat in the face of Amy's defiance of the state Goliath. Amy was released a day later into her mother's custody, with the provision that the family seek counsel and that the stepfather, who has been living outside the home, be allowed to visit only under "supervised conditions". The mother said she was "very proud" of her daughter's refusal to testify.

The villain in this case was the state and its laws, ostensibly designed to "protect" children. No reasonable person can claim that the law protected Amy, any more than similar laws and state procedures protect boys who find their adult male lovers dragged before the courts.

BEWARE·OF
CHILDREN

As usual, the state molestation of this youngster found an eager protagonist in the form of Solano County Deputy District Attorney Kenneth Kobrin, who prosecuted the case. Kobrin used the law as a fig leaf to defend his harassment with typical arrogance. "It is unusual, yes; cruel, no", he said of Amy's solitary confinement. "She is a member of society. She is not being beaten. She is not being tortured. She has been told to go to her room as society requires of her, until she tells the truth". In Kobrin's arrogant lingo, a tiny cell in a juvenile detention center became a mere substitute for an innocent girl's own room! When he repeated this flippant rationale on ABC's Nightline on January 9, the usually composed host Ted Koppel nearly exploded with rage, and said he would never want to see his own 12-year-old daughter treated so highhandedly. To Kobrin's query as to whether Koppel would allow his own daughter to be examined by the stepfather-physician in light of the charges against him, Koppel said he would have no qualms about that since a nurse would be in attendance in such examinations. Kobrin came across as a mediocre and inarticulate cog in a state apparatus answerable to no one. Its violation of the rights of Amy and her family reminded me of the rationale for the Mylai massacre and other atrocities in Vietnam: "We destroyed the city in order to save it".

What did Amy think of all this? It's hard to say since, as usual, the young person's point of view was considered ancillary, even unimportant, and she was not allowed to be questioned by the media. Her determination appears to have been motivated by a hope that her fractured family could be reunited, according to third-party reports. But what actually happened between her and her stepfather? What was her attitude toward it? Her mother said that Amy told her stepfather to stop doing whatever it was that he did, and that he stopped. But the details remained mysterious, despite the spotlight of national attention. Still, Amy's perseverance made clear that if any "molestation" did occur, it was the state that was doing most of the molesting. Her intransigence also demonstrated that young people are quite capable of heroism in the face of perceived injustice.

The treatment of the media in Amy's case is particularly revealing. The press voluntarily withheld the names of the girl and her parents. It did not plaster their names, address, place of employment, or any other particulars about them across the front pages, as it often does in cases of man/boy love relationships the authorities are determined to break up. (Amy's mother was identified only as "Lupe" by a UPI dispatch, and as "Janice" on ABC Nightline). Amy's stepfather has continued his medical practice--but boylovers caught in the juggernaut of heterosexist justice are regularly deprived of their livelihood even before being found guilty of violating an antiquated moral code that says minors cannot consent to sexual pleasure. None of the press reports I saw described the charge against Amy's stepfather in the loaded legalese that always makes a mutually joyful act seem like a loathsome crime: sexual abuse, aggravated

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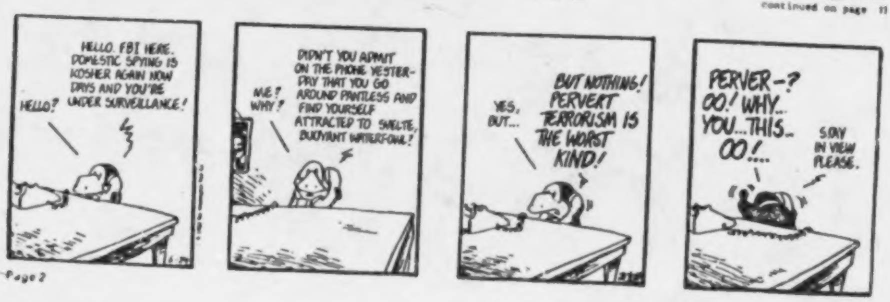
HELLO?
HELLO. FBI HERE. DOMESTIC SPYING IS KOSHER AGAIN NOW DAYS AND YOU'RE UNDER SURVEILLANCE!
ME? WHY?
DIDN'T YOU ADMIT ON THE PHONE YESTERDAY THAT YOU GO AROUND PANTLESS AND FIND YOURSELF ATTRACTED TO SVELTE, BUOYANT WATERFOWL?
YES, BUT...
BUT NOTHING! PERVERT TERRORISM IS THE WORST KIND!
PERVER-? OO! WHY... YOU...THIS... OO!...
STAY IN VIEW PLEASE.

DR. BRONGERSMA...

DR. BRONGERSMA SPEAKS AT L.A. NAMBLA MEETING

The Monday evening before a California politician named Deukmejian vetoed A.B. 1, sixty gay men gathered at the National Gay Archives to hear a Dutch statesman named Brongersma speak about advances made by gays in the Netherlands. During the 2 hours he spoke and answered questions, Edward Brongersma painted a picture of acceptance and freedom that amazed and inspired everyone.

(Much of the detail is duplicated in other articles on his speeches in various cities.)

For those who missed Brongersma's speech, a tape recording of it can be heard at the National Gay Archives, in Hollywood. It takes about two hours to listen to the entire talk. Please call (213) 463-5458 for additional information and arrangements. ☐

DUTCH STATESMAN SPEAKS IN N.Y. AT CHAPTER MEETING

by Richard Boyer

"Children give consent or refuse to give consent all the time, about everything. They let you know if they do not like something or if it is pleasing to them. There must always be consent -- before and during activity. The child must be completely respected."

The speaker, Dr. Edward Brongersma, is a lawyer who was elected to the Dutch senate in 1946. He was imprisoned for 11 months in 1950, convicted under a law forbidding physical love between a man and a youth under 21. He was able to reconstruct his legal and political career, and served 14 more years in the senate, 10 of them as chairman of the Permanent Committee on Justice.

During this time he experienced emotional triumph when he participated in and witnessed the repeal of the law under which he was convicted. From 1960 to 1980, he was the chief scientific collaborator of the Criminological Institute, Utrecht State University. In 1975, he was knighted by Queen Juliana in the Order of the Lion, the highest award in the Netherlands.

Now retired from politics, Dr. Brongersma continutes his work as an attorney, specializing in cases involving so-called "indecent conduct" with minors. He has written several books and magazine articles on the legal and sociological aspects of young people's sexuality. Dr. Brongersma currently has a regular column in PAN Magazine.

He maintains that children should have sexual fredom, and that they are capable of making choices about whom they wish to love and have sex with.

The Netherlands dropped its age of same-sex consent to 16 (the same as its age of hetero consent) in 1971 with wide support from youth groups, socialists, attorneys, and the church itself. It passed in the legislature, 150-5. In 1980, a law was adopted which made it legal for children 12-16 to have sex with an adult if the child initiated the act.

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Feedback

Unless permission is specifically given to do otherwise, names of contributors to this column will not be printed. Letters will be identified by city and state only.

Opinions expressed in the feedback column do not necessarily reflect NAMBLA's positions. Letters are presented in the spirit of a free and uncensored forum of ideas.

●

Dear NAMBLA Bulletin,

It's hard to say anything about the book without giving away too much, but I think NAMBLA mystery buffs will enjoy BLOOD BROTHERHOOD by Robert Barnard. More than one of his books have dealt peripherally with gay issues, and it seems he has kept an eye on recent developments in England, though he lives in Norway.

- Camille

●

Dear Editor:

I have just been sentenced to the second half of thirty years. Originally, nine months ago, a plea-bargain was arranged that I would receive fifteen years here in Montgomery County on boy-love charges and the State would not resist a request for concurrent time. Therefore, it was important that I first be sentenced in Prince George's County, Md. I received a plea-bargained 15 years there.

However, my case was "traded off" and the agreement abrogated. The State did ask for consecutive time. At my age of 69 years, this is a major catastrophe.

I go for appeal before a three-judge panel that can review the severity of the sentence. However, I am only entitled to a public defender for an attorney. My question is: Who is the best attorney on boylove cases in the U.S.? Is he available?

Much of the testimony taken on tape is totally false, having been coerced. Proof of that is a charge of anal intercourse -- something I have never engaged in during my life. There were no complaints from parents -- they were aware I was on parole and what for. No victim-impact statements were returned. This case was initiated and pressed by one solitary detective who, frustrated, forced me to move from Prince George's County to Montgomery County. After 30 days, I found I was being followed by two or more detectives.

It can be proven that three boys were repeatedly harassed and intimidated for testimony. They even followed two of them to West Virginia to coerce testimony. One boy through trauma even lost his voice entirely while admitting his guilt.

I do have a pension that I could use to assist in travel expenses if an expert advocate will come here.

What can you tell me? Time is important in this case because of the time limit during which one can appeal.

-- Raymond Latham

●

Dear members of NAMBLA,

I am a professional photographer and technical consultant who previously resided in Los Altos, California, near Stanford University. I now reside at Soledad State Prison, convicted of being a "child molester".

I found your literature most enlightening. I have been a friend of boys since I was a teenager myself, doing an extensive amount of nude photographic studies of them since the early 1960's.

Alas, in late November of 1974 I was rather heavily involved with a group of male pedophiles in Santa Clara County, men who were casually involved in sex and photography of willing young men. The whole affair was brought to the attention of the local gestapo by one of the "little innocents", a fat, ugly and jealous 13-year-old who felt "left out" when his 12-year-old boyfriend abandoned him for an "older man". Needless to say, the shit had to come down on someone and that someone was me.

I will omit the sordid details of the arrest, interrogation, $50,000 bail, grand jury indictments, biased television and newspaper publicity, five months in filthy county jails and all that accompanies it, etc. I eventually got shipped off to the State Nuthouse, Atascadero State Hospital, in central California.

The Santa Clara police were not very happy when I "confessed" to having photographed a district attorney's son, a local judge's son, and their own police captain, local Police Athletic League director. The police detectives broke open a safe deposit box in a local Wells Fargo bank and ripped off approximately 10,000 photo negatives. They eventually found the shots of the D.A.'s gay son, among others.

The Nuthouse was a real trip! It housed about 600 allegedly "insane" criminals as well as about 300 "sex offenders". The real crazies got chemical straitjackets (heavily tranquilizing drugs) while the sex offenders just got plenty of psychological brutality. The whole institution was staffed by about 1000 incompetent and featherbedding State employees and a handful of aged and/or quack doctors.

Back to the Santa Clara County Jail in January, 1976, a filthy, overcrowded pit full of human animals awaiting "justice". Four months of boring court proceedings and I was sentenced to State Prison for 45 years by Judge Bruce Allen, the "hanging judge" of Santa Clara County. In the beginning, I had foolishly made the mistake of "confessing" and "pleading guilty" to five counts of cocksucking minor boys. In retrospect I can see THAT was an obvious error. Never confess ANYTHING! Never SAY anything to a police officer! It's ALL put on tape, secretly, from the moment they begin to make an arrest. NEVER plead guilty! NEVER plea bargain! Make no statements and remain silent. Go for the jury trial. Go for the later appeal. Make the county pay all the expense. Make the justice ▶

NAMBLA MEETING...

continued from page 3

Brongersma added that the commander of the police vice squad in the Netherlands' second largest city, Rotterdam, testified during the hearings on law reform that he urged his officers not to arrest adults who have sex with children unless the parents requested it, and even then an attempt would be made to talk them out of it if the relationship was consensual. It was reported that children were unusually traumatized by the discovery and resulting legal problems, more than by acts of consentual sex and love.

The statesman concluded that from a country that was quite simplistic and repressive in its attitude concerning intergenerational sexuality, the Netherlands grew into one which now fairly well understands the complexities of this phenomenon in a rather short period of time (an encouraging thought for us here in the U.S.).

When informed of the tactics used by the police of this country in dealing with the boy when a consensual man/boy love relationship comes to light, Dr. Brongersma felt outraged in that it was simplistic and that the interests of the boy were not being taken into consideration by the authorities.

(In addition to addressing the meeting, Dr. Brongersma was guest at a reception in New York, and joined several members who went to see the Danish movie, Rubber Tarzan.) □

Stanford Speech Reprinted from the BAY AREA REPORTER, 3/15/84

Dutch Lawmaker Defends Sex Between Adults and Children

Informed Consent Not the Same as Molestation

Pedophilia — sexual relations between adults and children — is acceptable and should be permitted by law, provided the child consents to such a relationship. Edward Brongersma, a lawyer from the Netherlands, told a predominantly male audience of 50 people at Stanford University last week.

The meeting was sponsored by the Gay and Lesbian Alliance at Stanford and the Stanford Gay and Lesbian Law Students' Association.

Brongersma, who had served as a member of the Dutch National Parliament for 22 years and who once had been imprisoned for ten months because of a relationship he had with a boy of 16, said that the love relationship between an adult and a child can bring happiness to both individuals, provided there is no violence or abuse of authority and the child is not made to feel uneasy or unhappy.

Brongersma defined pedophilia as primarily sexual relations between a man and a boy, which "has always had special importance," but said the term also includes homosexual and heterosexual relations between any adult and child. Incest is included in his definition, but he said that is a "special category, and subject more to fear of authority than other forms of pedophilia."

Support for the concept is increasing in the Netherlands, he said, citing legislation in 1971 which lowered the age of consent from 21 to 16 and reduced sentences for those convicted of the offense.

"Seventy percent of the cases are not prosecuted anymore," he said, suggesting the police should not "waste their time" on consensual sex, but rather concentrate on child molestation.

"Tenderness, affection and love (toward a child) is not indecent anymore," he said.

Public opinion often has an image of pedophilia beyond reality, Brongersma said. "Three- or four-year-old girls being raped by their fathers is not what I am talking about."

But he acknowledged that a sexual relationship between a 30-year-old man and a seven-year-old boy can be fine. "If we see sex and lust as a good thing, I don't see why we should separate it as a category apart from other things."

He said many boys when they grow up are happy about the early sexual experiences they once had, but admitted that "most girls are negative about incest when they grow up."

One psychiatrist in the audience said he sees children who are loved and then dumped. "I work with a lot of kids who are really screwed up because of the rejection."

Brongersma responded that rejection can hurt anyone very much.

When asked how he defined informed consent, and whether seven-year-olds really have the ability to consent, Brongersma said people make decisions all the time without having full information about the consequences. "In marriage we don't know all the consequences that will occur. Why should we demand something here that we don't demand anyplace else?

"If a child wants to be touched in a certain way, if the child wants it, then it is fine, but the child must have the liberty to stop it at any point. But you see the child happy."

Brongersma said he had been asked by one judge in the Netherlands whether such an experience could traumatize a child; the judge had had a report from psychiatrists that said a child could be severely traumatised.

"I told the judge that if you were to call a hospital and ask whether having the flu is dangerous, the hospital would tell you that they have had several people die from the flu."

Brongersma admitted an adult could dominate a child, but then he said a child is "dominated and manipulated by adults from the moment it gets up to the time it goes to bed. His whole day is ordered about. Why is this a scandal when sex is implied?"

One member of the audience said he is an advocate of people being able to do things to their bodies regardless of their age, without the state interfering. "To say there may be emotional problems developing, that happens in any relationship. To say that someone may be traumatised — that's not the issue."

Brongersma did not respond to that comment.

In 1979 he established the Dr. Edward Brongersma Foundation in the Netherlands to advance scientific research into the development of the sexual lives of children and young people, "with special emphasis upon the phenomenon of erotic and sexual relationships between children and adults and between children and themselves, and the significance of these facts for legislation, judicial decisions, education and social life."

The topic of pedophilia had generated controversy before the speech, according to Gerard Koskovich, spokesman for GLAS. He said there were threats to protest the speech, but no such protests occurred. □

Feedback

▶

system employees WORK for their conviction. DON'T give it to them! Waste their time, their resources, and their money! Unload your real property promptly to trusted friends or relatives so you can get a local public defender at county expense. County P.D.'s are practically useless, but you won't lose a bundle.

In April 1976, I was shipped off to the California prison system at Vacaville (Wackyville) and eventually wound up at California Mens Colony in San Luis Obispo, a ghetto country club prison. Before release in June 1980, with the help of loving and caring parents and some former business associates, I had a fully equipped photographic studio in San Jose, was managing a graphic arts warehouse, and was a technical consultant for several nearby color labs and studios. Unfortunately, I tend to get involved with an occasional client who brings trouble. In this instance it was his latest 14-year-old male prostitute with his nine inches of experienced meat! Said prostitute was allegedly photographed and "molested" by me in September 1981. Said prostitute allegedly returned for another sitting in March 1982. A few days after that, he was picked up by the San Jose Police for allegedly bicycling (peddling his

▶

PARDON A PEDOPHILE

The German pedophile and author, Peter Schult, is 55 years old. He is now serving a three-year prison term -- convicted for having had love relations with five boys between the ages of 13 and 17. While serving prison terms he has written the books "Besuch in Sachgassen" (Visit in Blind Alleys), an autobiography published in 1978, and "Der Gefallene Engel" (The Fallen Angel) from 1982.

Because of "mistakes" in a series of routine medical health examinations, a malignant tumor was "overlooked". Now Peter Schult may die within six months from incurable lung cancer.

He has served 2/3 of his prison term after which one is normally granted probation. But according to Schult's attorney, only a pardon remains as a possible means of setting him free the last days of his life.

All of Schult's love relations were free and mutual, and according to the courts' professional experts, no one suffered any harm. Nevertheless, the system's bureaucracy and legal machinery is irreversibly taking his life. That is why he must not die in prison as a consequence of this.

Letters supporting pardoning Schult must be sent to his attorney Rechtsanwalt, Jürgen Arnold, Hohenzollernstrasse 102, 8000 Munchen, West Germany. The letters must be addressed to: Westberlin Justizsenator and Bayerishen Staatsminister der Justiz. If you have any problems with German you may send the letter to me in English, French, Italian, etc. We'll get them translated and forward them to the attorney. Write to:

Peter Schmidt, a child lover, public contact person for the Pedophile group, c/o F 48 - foreningen for bøsser og lesbiske, Postbox 1023, 1007 Copenhagen, Denmark. Telephone : (01) 13 19 48 Mondays from 8 to 9 PM. □

BAD KID
THE MAGAZINE FOR TODAY'S NORMAL AVERAGE HYPERACTIVE UNDERACHIEVING NASTY UNGRATEFUL SPOILED LITTLE SMARTASS
FALL 1983 25¢
I'M SORRY, SIR. TESTS SHOW THIS BOY IS DEEPLY AUTISTIC.
WOW-- ME ARTISTIC?
THEY'RE BIG BUT CLUMSY
THE FINE ART OF OUTRUNNING ADULTS
L'IL STINKER
TWISTING, TWITCHING, and TAPPING
ADVANCED COVERT SIBLING RIVALRY
DIPPING THEIR TOOTHBRUSHES IN THE TOILET WHEN NOBODY'S LOOKING
HOW TO LAUGH KNOWINGLY AT DIRTY JOKES YOU DON'T UNDERSTAND
THE ADVANTAGES OF HAVING ALCOHOLIC PARENTS
"WHERE'S MIKE HUNT?" AND OTHER WAYS TO DRIVE SUBSTITUTE TEACHERS OUT OF THEIR MINDS
LET'S BE DOUBLY ANNOYING
PICKING UP FUTURE BEHAVIOR TIPS FROM YOUR PARENTS' SCREAMING ARGUMENTS
ARE ALL ADULTS BIG FAT LIARS?
Life in Hell
©1983 BY MATT GROENING

Feedback

▶

ass) on the streets of downtown San Jose. And whose name and address does he have in his pocket? Why MINE of course! And since I'm the infamous photographer who accidently photographed a district attorney's adult son doing his indiscretion so many years ago, the police vice officers grill and badger this nine inch wonder until he's well done and confesses to anything. The gestapo arrives at my studio door a few days later, about 12 strong, like gangbusters, armed with the inevitable search warrant. I got handcuffed and led away in chains while the swines take anything and everything they want to, even though it's not listed on the search warrant. Bail is $30,000 for one count of alleged cocksucking. I'm out in three days. The night after I go out, the pigs are at my residence in Los Altos with another search warrant and do their whole routine, crawling around under the house, in the attic, and everywhere in between. All they got was a nice packet of pictures I had prepared for them, 18 years and older. The good stuff was miles away in a friend's bomb shelter! Two months pass and no legal action happens whatsoever. And then at the end of May 1982 comes the second arrest. It took them THAT LONG to find two negatives amidst 5000 or so. TWO counts of cocksucking, $50000 bail, in jail again, and out in a few days. And then the fun began. Telephone wiretaps, bumper beepers, daily surveillance. I had a ball wasting their time and money! Phone taps are easy to detect if you've been into electronics, as I have since I was twelve. Both the house and studio phone lines were bugged, by the TELEPHONE company! Their taps are so obsolete it's pitiful. No sophistication whatsoever. I had friends call and tie up the phones for hours with all kinds of crazy messages, live and recorded. I had the phones on all night with recorded audio to waste THEIR tape. After three weeks the taps were dropped. Then came the two bumper beepers. Those can be detected nicely with a VHF scanner receiver. I stuck them on the neighborhood garbage trucks!

For almost a year the "court proceedings" went on. The "victim" showed up at the preliminary hearing (flown in from Arizona) but that was the last anyone ever saw of him. After the prelims he was flown back to Arizona and his dad promptly dumped him in the State Nuthouse there. He'd been there before for "treatment" since he was 12. Apparently the kid was a sexual menace -- poking all the little girls and seducing all the gay guys -- so he got locked up at an early age. Michael is his name. A nice kid. He's quite popular up in San Francisco and in Phoenix, and on his occasional meanderings down to San Jose. Apparently the pigs like him as he can be easily persuaded to rat on his clients. He's always getting busted for soliciting and then they drop the charges if he'll blow the whistle on his latest John. A dangerous nine inches!

Back to my "trial". The top level district attorney who presided over my preliminary hearing in June 1982, one Julius Finkelstein, subsequently got involved in an interoffice scandal a few months later while he was running for election as head district attorney. He lost the election and then got demoted to handling all the drunk driver cases in the county! Strange, everyone who comes against me gets demoted, fired or suffers some abominable circumstance.

By March 1983 the new prosecuting attorney realised that he was going to

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Jerks in the media

FROM THE RIDICULOUS TO THE ABSURD

By John Fish

In less than a week's time, two unlikely publications have come into my possission--one opposed to all child sexuality, the other advocating certain types under certain circumstances. Neither are more than curiosity pieces, alternately provoking disbelief, laughter and disgust as I read through them. The one supporting child sex also evoked feelings of disappointment and embarrassment for a presumably wellmeaning man whose efforts to promote the acceptance of children's sexuality have been going on for over 20 yearrs.

The anti-sex publication is the first issue of "Kiddie Cop Watch". Appropriately enough, "Kiddie Cop" is the child of former L.A.P.D. Detective Lloyd Martin and Jill Haddad. Presented in the format of "My Weekly Reader", and printed in police blue ink on virgin white paper, "Kiddie Cop Watch" is just what you'd expect from a man retired early because of psychiatric problems. A small drawing on the front page shows a boy and girl with the forlorn, dejected look that seems to give comfort and reassurance to many oppressive parents and teachers. Inside are horror stories of child abuse--individual case histories cited, as always, without any data on how typical or untypical they are. All but one of them occur within the home (and all involve authority figures). Despite this, the newsletter's cross word puzzle (that's what I said) identifies broken homes as a "primary source of exploited children".

In addition to the cross word, there are also feature columns: The Chief's Message--written by Lloyd, who appearantly had fantasies of being Crazy Ed Davis' successor to the throne; See The Woman--a gripe column by Jill Haddad; Classifieds--announcements, sales-pitches and self-congratulatory messages assembled in the format of a classified ads page; and two "advice" columns--Ask An Offender and Ask Officer Mike. Judging from "Offender's" answer to a mother's question of why her son would let his scoutmaster fondle him for six hours without complaining to anyone, the "Offender" appears to be ol' Lloyd hisself. This seems appropriate if true. I can't think of anyone who has offended more people than Martin. "Officer Mike" features a reprint of California's child abuse reporting law--a useful piece of information for west coast boys and men.

The back page of "Kiddie Cop Watch" features "an actual letter from one molester to another", and displays the inability of people like Martin and Haddad to distinguish between forced and consenting child-adult activity. The letter writer seems to be a harmless Nat M. Black type, writing about boys he has seen in movies, on television and in magazines like Teen Beat, Variety and American Films. He trades photos of boys with his friend and shares in his excitment at having seen a "buldge" (sic) in the "skin tight cutoffs" of a 12-year-old boy: the type of person Martin enjoyed jumping, beating up and arresting in his never-ending attempt to reassure himself of his heterosexual identity.

As bad as "Kiddie Cop Watch" is, I am sorry having to say that the Bulletin of the Rene Guyon Society is even worse. While Martin and Haddad take facts and distort them, Guyon spokesperson Tim O'Hara misstates facts altogether. His false claims seriously damage the credibility of his advocacy of sexual activity for minors. And he does not seem to be much of an advocate of children's liberation. He states that sex law reform will "help keep the Nation's young girls in school", as if schools didn't oppress children as much as churches and unsupportive parents.

The best way to explain O'Hara's bulletin, and why he is so popular with people like Martin, is to quote a few of the more absurd statements. So, from the March 1, 1984 Bulletin of the Rene Guyon Society, here is the world according to O'Hara: "The Guyon Society works for only sex activity when condoms are used for vaginal and anal activity. Many in the sex field call this 'mutual masturbation'". "Be wary of the W.C.T.U. (Women's Christian Temperance Union)! They went through all state's laws and had them altered so that no child can have legal sex before age 18 anyplace (sic) in the USA ." Remember children's need for their sex law changes so they can be taught about condoms. Otherwise, they will catch herpes disease and pass it on to you by way of toilet seats, faucet knobs, silverware, kissing, etc. It is a matter of your survival and avoidance of disease"!

I don't know about you, but if I were going to create my own private fantasy world, I think I would try to make it more cheerful and non-threatening then the one O'Hara has come up with. I don't feel good about criticizing O'Hara's Bulletin. He sent it to me in an attempt to improve communications between his group and ours. I think he is sincere and he is certainly not out to gain any of the power, prestige and money that are the unjust rewards of tyrants like Martin and Haddad. As someone who found comfort in knowing of the Guyon Society's existence as far back as 1970, I am sorry to see just how bad its writings are.

However thankful I was for the NAMBLA Bulletin before reading these two groups' publications, I am that much more thankful after having read them. □

A SHORT STORY

by Nat M. Black

Quick flashback: (Black-and-white image) A generation ago. There I am when I was ten, walking through a park with a few chums after a game of baseball. We spot some kids playing soccer and we laugh. "Look at those refugees ", one of us says.

Our parents? Maybe at home or at work but they sure don't come out to watch us play ball.

I had remained in my old neighborhood long after most of my friends moved out. I had no "need" to live in a better place. But finally, a few years ago, I moved to Clover Hollow, a totally modern and upbeat ~~suburb. Financially~~ it helped that I was single -- I had no wife who "needed" a mink coat, no little girls who "needed" braces, and (unfortunately) no little boys who needed sports equipment.

Of course I wanted to get involved in a kids' program -- and in Clover Hollow, that meant sports. I had a look at kids in tackle football, with full uniforms, grunting and groaning with coaches constantly yelling. This was not for me. The baseball program was moribund. But then I saw a dynamic program, loads of lads in bright colored shorts all over the field. The sport was soccer.

I got a book and learned what I could fast. It wasn't easy to get accepted by the "dad 's" most involved in leadership positions. I applied myself to unpopular shit jobs in groundskeeping and recordkeeping that others weren't thrilled to do. Eventually someone moved and there was an opening for an assistant coach on the 10-year-old traveling team. A dad was interested. But I came around to the practices, chased balls way behind the goal, raked the mud when the field was muddy, and started driving a couple of the kids. The dad was nowhere to be seen and I finally was named.

The bulk of the traveling was to similar suburbs, easy drives from Clover Hollow. But the team was also getting into tournament play. A nearby town, Saddle Hills, was hosting a weekend tournament. This means each neighboring team, such as ours, would host a visiting team coming from some distance away. Hosting means each boy's family from nearby has one of the boys from far away stay at their house during the tournament.

My team, the Lancers, drew a team from Canada called the Aigles. I was there Saturday morning when their bus pulled in, mostly hanging around. The head coach was supervising the housing arrangements, and most of the families of the Lancers were there.

The Aigles were an attractive bunch indeed. But one of them was obviously something special. Slim, with a mop of blonde hair, he was very excited, jumping around, checking out the Lancers' families. His name was Gerrit.

Gerrit was matched with Scott on my team. Scott's an average kid, a starter but not a star. His mom is divorced. Gerrit's lucky parents were not part of the Aigles traveling party.

The Lancers played three games that day and won two. I did my usual things: recordkeeping, pointing out things to players on the bench, helping look for weak spots on the other teams, dishing out drinks.

The Aigles, perhaps travel-weary, only won one of three. But Gerrit played with speed and elan. The Aigles were all at our last game, finale of the day's schedule. Rarely does one get to see ninety lovely ten-year- old boys in one place.

I've always found the end of the last game depressing. The kids go off with parents in happy little groups (if they win), or close little groups to share the unhappiness of a loss. I just stand there alone, usually with time to kill. And that day was especially bad. I enjoyed watching Gerrit, and how could I let him slip away overnight now?

I started jumping from family to family, asking where the players could be reached that night, and hoping I was acting offical enough to get away with it. I got to Gerrit and Scott presently.

Scott's mother said, "My daughter Jill has a gymnastics meet so they'll be going there. I'm sorry but it'll be on till late."

Scott said, "BORE-ing!"

I said, "Maybe they shouldn't be up so late. Besides, I want to go to the Sports Card Show. I know Scott's a real collecter, so maybe they can come there with me."

"Please," said Scott.

"Now why would you want to take two kids out there?", she asked, with some disbelief and possibly distrust. Although I hadn't gotten in any real trouble, I didn't have the best reputation, all that hanging around little boys in shorts. How much had she heard? Had she drawn any conclusions?

"Please," begged Scott and Gerrit.

"I'm not leaving you two home alone until so late at night. Now let's go," she said, moving to go.

WHIZ KID SHOOTS HIMSELF

Plano, Tx. (AP) - A 14-year-old boy "computer whiz" shot himself to death a few hours after getting braces on his teeth, becoming the seventh teenager in this wealthy Dallas suburb to commit suicide in the last year.

David Eugene Harris killed himself Monday night with a .357-magnum pistol. He did not leave a note, but his parents said getting the braces might have triggered the suicide.

"Something just snapped," said Gene Harris, the boy's father. "That's all we can figure."

Friends and family described the boy as a friendly "computer whiz ". They said he was in a good mood Monday night despite the braces he received earlier in the day.

The rash of teen suicides has prompted Plano residents to set up a crisis hot line and organize several student groups to help avert more deaths. But one official said he doesn't know if the programs could have prevented the suicide.

"With something that appears to be impulsive like this, it's difficult to tell," said Dr. Clen Weimer, chairman of the board for the Plano Crisis Center. □

Feedback

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have to go through with the whole jury trial and all the associated expense. I wouldn't make any deals and they had wasted a bundle of the County's money by that time. A date was set for jury trial in early April 1983. Along comes the date, and the D.A. wants more time. I said no! They couldn't get the "victim" out of the Nuthouse in Arizona! The mock trial proceeds without him. "Evidence" is one photograph. It was a two day sham; quick and dirty and blatantly illegal. There were so many technical errors it will undoubtedly get reversed. I'm found guilty. The judge delays sentencing for three weeks. He raises my bail to a quarter of a million dollars. I'm escorted to jail and then out again in one day! Three weeks later I get sentenced to 11 years in State Prison. That was on April 22. Written Notice of Appeal was made that same day. Bail was denied. The judge was enraged that my attorney was ready with the Notice of Appeal before I was even sentenced. The whole "trial" was a sham and he knew it. The judge added 4 years as "enhancement" because of my prior conviction. This relates to California Proposition 8 being voted in June 1982. A recent California Supreme Court decision exempts me from enhancements since I was arrested before the election. But this trifling matter has to be re-appealed in the State Appellate Court, subsequently wasting ADDITIONAL time and taxpayers' money.

So here I am now, in a maximum security prison which is overcrowded and understaffed, with 2400 armed robbers, rapists and murderers crowded into one-man cells which are now modified to house two men. But, I'm fortunate, blessed, or just always have good luck. Within a few months here I got my job as the Chaplain's clerk. I do all the paperwork for the inmate marriages. I survive quite well under the circumstances. The State pays about $20000 for my free room and board!

I know for a certainty that the case will get reversed eventually. I have a competent attorney. We will ask the Appellate Court (San Francisco District) for bail on appeal.

The Santa Clara Superior Court Clerk "erred" in not filing the Notice of Appeal with the Appellate Court within 30 days of the trial. The man must be a totally ignorant fool or an obediant slave of the judge! This just delayed the case getting into the Appellate Court for the past eight months. They know that they are going to lose. They know I have over half a million dollars in property collateral available to post appellate bond. They just want to delay the inevitable for as long as possible, hoping I will get eliminated by some crazy inmate. But I'm a survivor!! I'm also interested in exposing corrupt politicians who try to hide their perversions by using their power and authority. I have no doubt that I will succeed!

In conclusion, let me say that I believe men who capture and imprison other human beings deserve nothing less than crucifixion. The despotism of any country can be measured by how it treats its prisoners. American prisons reflect this despotism in the most disgusting and shameful way. May the judgments of God fall upon those who perpetuate and feed this godless system -- the corrupt legislators, judges, district attorneys, and police who are blindly headed for an eternal hell, where they will finally receive the fruits of their labors on Earth.

- Soledad, Ca.

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Editor - NAMBLA Bulletin:

Is parliamentary procedure and bureaucracy taking over NAMBLA? A very disturbing (to me, at least) event happened during the Boston conference.

During the conference, it occurred to me that certain changes in procedure might make our organization more responsive to members who cannot attend the conference - either because of cost or distance. A motion was written up and submitted to the "chair".

Because this item had not been "put on the agenda" at the start of the conference -- the day before -- it never saw the light of discussion or vote. This may be fine for "efficiency", but it is ominous to the future of the organization.

What this event indicates is that all ideas for improvement of the organization, especially if they may ultimately mean a change in the constitution, can only be submitted once a year (or however rarely a general membership meeting is held) and then only **BEFORE** the meeting gets underway. Any ideas that occur to a thinking member during the conference will probably have to wait until the next year. This can be frustrating and stultifying for a thinking member.

I will mention here the un-discussed motion made at the conference, because it directly relates to our members who have contact with the organization only through the bulletin.

In the past, official positions of the organization have been established as a result of members submitting "position papers" at a general membership meeting. These papers usually reflect the personal position and opinion of the author. They are circulated among those in attendance at the meetings, are seriously read and discussed by a few of those present, and are voted on by those present -- usually with very superficial thought and evaluation as to long-term ramifications of specific wording, and usually under the pressure of time. If the author of the "position paper" is not present at the meeting, the position is usually not well "motivated" or pushed.

This seems to be a serious disadvantage to those members who cannot personally attend these conferences or meetings. They find themselves members of an organization whose official and public stance on a variety of issues has been established with no input from them. Correspondance with other members around the country has indicated that many of them disagree with specific positions of NAMBLA, but feel frustrated that there is no way for them to vote or have their say in setting these positions.

My motion, or recommendation, was to have ALL proposed "official positions" of NAMBLA voted on by mail, with a ballot sent out in the bulletin. Since these represent the public stance of NAMBLA on specific subjects, they should represent a large portion of the membership. Therefore, it would seem that a 2/3 positive vote of those members who are interested enough to return a ballot would be called for.

We need to consider and include the views of all those members who cannot attend membership conferences, before we go around stating that "NAMBLA says..." or "NAMBLA stands for...".

How about some discussion of this by those distant members? Our bulletin should be a forum for discussion of organizational matters. That is more its function than to be "artsy" and "literate". Those functions can be filled by commercial publications such as PAN, GCN, and Fag-Rag. Our bulletin should be our media for communication of organizational policy and debate.

- Jim Cooper

◆

Dear Editor and Collective:

I am in prison. The Bulletin comes in with no problem. I certainly enjoy it as it helps me to understand more about others' thoughts and feelings.

I like the concept of the Unicorn, and hope it will become a regular (and popular) item.

Keep up the movement. I'll be out in a few more years, and have some ideas I'd like to present to the Collective about advertising. I've worked that field in the past, and know some "tricks of the trade ".

- Oklahoma

BOYS IN THE MEDIA

by Nat M. Black

IN THE NEWS: Gary Coleman, now 16, is trying to shed his kiddie image. He'll portray a teenage arsonist in a TV-movie, "Playing with Fire"... Ricky Schroder, 13 has been dating Natasha Wagner, 13, daughter of Robert Wagner and the late Natalie Wood... Trever Farrell, 11, of suburban Philadelphia, has been getting publicity for giving food and other handouts to hoboes downtown. His family drives him in... John O'Conner, 11, Bronx, New York wrote a letter to NY's new archbishop, also John O'Conner. The handsome parochial school boy had a featured role at the coronation... New York Daily News pitied the men making a movie about a Catholic high school, trying to film a scene of some 50 naked students in the school swimming pool.

ON T.V. A recent ABC kids' special had Alison Smith as a girl who got into the cast of Oliver! disguised as a boy. Brian Bloom co-starred... "60 Minutes" described California boys 12-13 being strip-searched for merely looking suspicious.

AT THE MOVIES: Henry Thomas has grown 5 inches since E.T. He plays in the new film Misunderstood, with Huckleberry Fox as his cute little brother. Good character interaction, though I realized after nothing much happened... Another movie with a 12 and a 5, playing the same person at different points in time, is Greystoke. The young Tarzans romp in the first half hour only... Robby Kiger, 10, stars in Children of the Corn with a bunch of evil teenagers. Don't bother unless you like that kind of movie... Coming: Justin Henry, 12, in Sixteen Candles. Wil Wheaton, 10, in The Buddy System. Kidco, prepubescent entrepreneurs extraordinaire; David Shane Bailey, 12, in The River.

THE BOYS OF TARZAN, PART ONE: In the original Tarzan of the Apes, a 1917 silent, Gordon Griffith, 10, played Tarzan as a boy. He was virtually nude and had long black hair. Griffith also played in Son of Tarzan (1920), as the boy. By then he was wearing a furry loincloth. Next appearance of a boy in the series wasn't till 1928, when Bobby Nelson played a castaway befriended by Tarzan. Bobby looked about 8, very cute, and wore a furry suit which went from his chest to mid- thigh. Interestingly, Frank Merrill, who played Tarzan then, soon after retired to personal appearance tours and working with kids.

Johnny Sheffield, the most famous Boy, was chosen at age 5 by Johnny Weissmuller, who taught him to swim. The boy character was reintroduced in 1939 to retain the family audience in view of criticism for savagery, and add something heartwarming. Johnny looked like a junior Weissmuller, with curly hair, a good build, a flair for athletics, and a loincloth cut high on the sides. After Tarzan Finds a Son, he played in Tarzan's Secret Treasure (where he was kidnapped by gold hunters), Tarzan's New York Adventure (kidnapped by a circus owner), Tarzan Triumphs (kidnapped by Nazis), and several others until he outgrew the part... Part Two next month.

TOGETHER: Tarzan and 'Boy.'

NOSTALGIA: This issue we review the highlights of the July 1977 Boy Actors Film Society newsletter. (I skipped June 1977 which is a special all- picture issue called the Adonis Gallery, including Leif Garrett, 16, in a dark swim brief). Scott Baio, 14½, still living in Brooklyn, had starred in Bugsy Malone, and a big future in acting was his. Johnny Whitaker and Christopher Ciampa played in Mulligan's Stew, a short- lived TV series about a big family. Singers Tom(13) and John(12) Keane appeared on Johnny Carson and other shows and had a few hit singles. Todd Lookinland, 11½ and a beauty, did a good job in A Sensitive, Passionate Man, playing the son of a successful man who became an alcoholic. ☐

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books

The Cripple Liberation Front Marching

by Lorenzo W. Milam

What is it like to be young, and beautiful, and gay -- just beginning to discover the love of other men -- and to be struck down by a disease so crippling that one's body becomes "the body of a 75 year old man?"

"I thought I was twice cursed," says author Lorenzo W. Milam. "I was gay, and I was a basket case. At eighteen, my life could've been a disaster. It almost was."

The book takes us from the moment of loss of body to a time, ten years later, when Milam chose to rejoin American culture. "I came back from self-imposed exile (in Spain) convinced that I had to show the country that nuclear brinksmanship and sexual repression were ruinous." From 1962 to 1977, Milam was to build (and give away) over a dozen "community" broadcast stations. "He revolutionized American radio," said writer Tom Robbins.

"There are 3,500,000 gay handicapped in America," says Milam. "Their story has never been told. I wanted to tell their truth, as I saw it..." After reading the first ten pages, we think you will agree that Milam has told the truth. With a vengeance...

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News Analysis

THE CASE OF AMY

continued from page 2

sexual assault, rape, etc. Why such a solicitous attitude?

The treatment on ABC Nightline was most illustrative in this regard. Host Koppel was so obviously annoyed by Kobrin's mealy-mouthed explanations that he not only challenged him repeatedly, but abruptly signed off without thanking his guest. He looked like he wanted to strangle Kobrin--a quite natural reaction, shared by many viewers besides me, I'm sure.

Koppel's next guests were more recognizable as members of the human race, though their statements were not exactly sex-positive. Dr. Anne Cohn of the National Committee for the Prevention of Child Abuse (a group to which, incidentally, NAMBLA has made a modest donation because it favors the prevention of child abuse) asserted that by the age of six, "A child can say no". The real solution, she argued, is to educate the child about sex. She took what might be considered a liberal position on cases of incest. Coercion by the courts to get a family into therapy is justified, she argued, but "jail is not the solution for most cases of child sexual abuse. It is rarely the solution to send Dad to jail". Court involvement is "not always helpful"--an understatement if ever there was one. In reality, incest cases rarely result in jail for the adult, mainly because the policy in U.S. society is to keep the family together at all costs. Cohn said nothing about cases of man/boy love, which are less problematic than incest because the boy is not trapped in an institution from which he cannot escape. He is free to come and go as he pleases.

Dr. Hank Giarette, founder of a group called Parents United, said that the police should deal with the father "in a gentle way". He thought the state should "threaten the father with jail", but not actually send him there.

Although the press never condoned what the stepfather did with Amy, its paramount concern was with holding the family together. The New York Times, in an editorial (January 15), accused the authorities of "relentless zeal", and urged them to show "a certain amount of sensitivity" and to ask "Are we helping this child"? It said, somewhat naively, "The ultimate lesson may be that statutes alone can't protect children". But it shied away from any discussion of the sexual feelings of young people, or of the fact that many boys and men are persecuted because of friendships they both want. No mention of the young person's right to say yes or no to any relationship without the state stepping in like a bull in a china shop. Keep the reporting laws, the Times urged, but it also asked prosecutors and judges to show more "attention" in applying them.

The laws are good, the Times said. It's just the occasional misapplication of them that is bad. But the opposite may be closer to the truth. Amy, it would appear, did not consent to her stepfather's foundling (or, if she did, she changed her mind), and he stopped it at her request. But what about cases involving consensual friendships between a minor male and a man, in which both parties want the relationship? In those--in which the Times has yet to urge the authorities to show "a certain amount of sympathy"--the police methods of coercing statements out of the youth regularly involve unconstitutional procedures, as well as mental and physical abuse of the boy. In most cases--in all the cases that have come NAMBLA's way in the five years of its existence--the state has traumatized the boy and supressed his true feelings and desires. District attorneys with an eye on higher office, and police looking for Fearless Fosdick awards and increased budgets for their crusade against "vice", violate with impunity the rights of those concerned--the boy, the man, the boy's family. Urging such people to show concern for "helping the child" is beside the point. Their aim is to amass conviction statistics. They are quite prepared to destroy the child in order to save it--especially if the young person is willing partner in the same-sex relationship.

In such cases, the child's wishes should be paramount. If the young person, as in Amy's case, does not wish state involvement, there should be none. Amy showed that young people can have a better grasp of reality and a greater commitment to principle than the adult emissaries of the state.

Amy's case should prove embarrassing to "child protectors" in states like New York where they are currently pressing for legislation to make the child's testimony sufficient to convict an adult of violating laws against sexual contact with underage people. I have no quarrel with allowing the child to testify, or even in taking the child's testimony seriously--seriously enough to convict an adult who has indeed violated its rights. After all, a child should enjoy the same legal rights as an adult. But it is outrageous that such testimony should be admissible if it has been coerced by police procedures that involve brutality, torture, threats, insults, physical abuse, holding the boy incognito and interrogation him without his lawyer being present, or without informing him that he has a right to have a lawyer present, and so on--all of which are standard fare in the state's vendetta against a man and a boy who are lovers or friends. Despite NAMBLA's efforts, the media continues to ignore this aspect of cases involving consensual sex between men and minor males.

Amy's case illustrated not only the pro-family bias of American society, but also the omnipotency of the state in breaking up private relationships, against the will or wishes of the people involved. It also shows how far out of whack our society's professed concern for young people is. Unicef's 1983 report on "The State of the World's Children" noted that 40,000 children die needlessly every day. Of the 15 million children who died in 1983, "Five million of them die in the stupor of dehydration caused by simple diarrhea. More than three million die with the high fevers of pneumonia. Two million die marked by the rash of measles. A million and a half die racked by the spasms of whooping cough. A million die with convulsions of tetanus". Oral rehydration therapy, mass immunization, and breast-feeding could eliminate most of these deaths. But American society is too busy financing its obscene war budget and state brutalization of young people to help make a dent in this crime against young humanity. ◻

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movies

IL DEPUTADO (THE DEPUTY) directed by Eloy de la Iglesia. Spanish with English subtitles. Color.

A boy-lover is elected to public office and has to deal with opposition agents who are trying to ruin his political career by revealing his sexual nature. This is the story of THE DEPUTY from post-Franco Spain. It was released in 1979, but has only been in this country a year. It has played very successfully at gay film festivals in New York and San Francisco. This is scarcely astonishing since the movie's impact is undeniable.

I was particulary interested in how the politican's wife, Carmen, handled the situation. She eventually decided to make her husband's boy-love a part of the family rather than allow the gay part of him to be hidden from her, forcing the man to lead a double life. Her acceptance of the relationship was wonderful to behold, though I suspect that it made the San Francisco audience somewhat nervous since they laughed during this most touching section of the film. I can understand this reaction. If one man can successfully be open and honest with his family, if he can integrate a boy lover into family life and deal with him as a son, this challenges basic assumptions raising the spectre of an alternative lifestyle no one would have thought possible. A married boy-lover seeing this might very well become uneasy. He might be faced with the need to examine his own life.

Although the movie had a noticeable leftist bias which is contrary to my own convictions, I didn't find it so obtrusive that it spoiled my enjoyment of THE DEPUTY. The film was so well-acted and scripted that the socialism in the background became a minor drawback.

Give yourself a treat and an experience that will set you thinking. If THE DEPUTY comes to your city, rush out and see it. It will be worth the price several times over.

-- Linda Frankel

CALENDAR

May 1:	Bulletin Collective meeting. Call for info.
May 16:	Los Angeles Chapter open meeting. 8 PM 1654 North Hudson Avenue, Hollywood
May 17:	Horatio Alger (N.Y.) Chapter Park Royal Hotel, 23 W. 73 St., 16th floor, Michael Lavery on: Legal Pitfalls
May 19:	Steering Committee meeting. Call for info.
May 26:	San Francisco NAMBLA meeting. 11 AM The Pride Center, 890 Hayes Street
June 1:	Bulletin Collective meeting. Call for info.
June 11:	Los Angeles Chapter open meeting. 8 PM 1654 North Hudson Avenue, Hollywood
June 30:	San Francisco NAMBLA meeting. 11 AM The Pride Center, 890 Hayes Street

Adam

(Dedicated to Adam Walsh, dead at six)

For a life six years is not a long time,
Barely past the age of nursery rhyme;
An age for kids when myth and fantasy
Still rule the world of cold reality.

And you, Adam, with your strange little hats
Had just come aware of baseballs and bats.
But you'll never hear the thunderous roar
Of hometown fans gone wild begging for more.

And you will never hit one of your own
That will bring you racing clear 'round to home.
There are so many scars, scrapes, bruises, and bumps
You will never get in taking your lumps.

And you will never have the chance to tease
Some sweet little girl, years later to please.
Some lucky puppy will never grow old
With you as his pal to love and to hold.

You will never get to struggle with math
Or dream of oceans while taking a bath.
These things little boys like to do and more
And all the wonders life held in store,

These--all lost to you, no chance to regain.
They remind us you're gone, heighten the pain.
And what was a doing the night when you cried?
If I had been there you might not have died.

Or if you had died at least with the worst
It's for damned sure you would not have been first;
He who killed you must first have killed me too;
I want you to know, Adam, I love you.

Russell T. Kinkade

[From the Fort Lauderdale News, July 19, 1983]

SCOUTMASTER ARRESTED, ACCUSED OF MOLESTING FOUR IN HIS TROOP

(By Dan Christensen)

WILTON MANORS.—A scoutmaster was arrested Monday night and charged with sexually molesting four 11-year-old boys in his Boy Scout troop.

William Joseph Maitre, 32, who moved out of his duplex apartment in the 1700 block of Northeast 26th Drive a week and a half ago, was arrested at his parents' home in Port St. Lucie and charged with four counts of lewd, lascivious or indecent assault on a minor, said Wilton Manors Police Chief Bernard Scott.

Maitre was being held today at the St. Lucie County Jail without bond pending his return to Broward County, said a spokesman with the Port St. Lucie Police Department.

Wilton Manors Detective Rick Wiley said all the assaults involve incidents over the past six weeks.

Police also have received statements from four other boys, ranging in age from 9 to 12, concerning alleged indecent assaults. "And there are others we are going to be talking to," Wiley said.

"There are about 90 kids who have passed through his troop since he joined it about two years ago and we have talked to eight," Scott said. "All eight have told us of some type of indecent act or something that could be construed as an indecent act. A lot of these kids are away at camp and it's been hard tracking them down."

Scott said police have been investigating the case for about three weeks after receiving complaints from parents.

[August 4, 1983]

RESIDENT FACES BATTERY CHARGES

BOYNTON BEACH.—A 21-year-old man was arrested by Boynton Beach police last week and charged with the rape of a 16-year-old Boca Raton girl.

Police said Nathaniel King of 217 N.W. Seventh Court, Boynton Beach allegedly accosted the girl when she was walking near 320 N.E. 10th Avenue at 1 a.m. in the morning.

They said she struggled to free herself and was cut on the hand by a knife carried by King.

King was taken to the Palm Beach County Jail and charged with sexual battery with a knife.

[August 6, 1983]

MAN ACCUSED OF SEXUAL BATTERY

A 23-year-old St. Petersburg man was arrested Friday for allegedly molesting his 9-year-old cousin.

Police spokesman Bill Goodin said the girl was sexually assaulted July 18 while she was staying at her grandmother's house. The girl's mother learned of the assault after she discovered that the child had contracted a veneral disease.

The man's name is not being published to protect the identity of the girl. He was accused of sexual battery.

[August 9, 1983]

RAPE OF BOY CHARGED

A man charged with raping a 15-year-old boy and threatening his victim's life if he told about the incident has been arrested, Tallahassee police reported Monday.

Lawrence "Larry" Council, 28, of Rt. 2, Box 361, Crawfordville, is being held without bond at the Leon County Jail and is charged with sexual battery, a jail official said.

The three-week-old incident was not reported until Thursday, records show, because the victim feared for his life.

The northeast Tallahassee teen-ager, police report, was visiting Council at a nearby home when Council, wearing only a towel, grabbed him and forced him into a bedroom. Council then threatened to beat up the victim unless he would perform oral sex, records show.

After the act, Council said he would kill the victim if the rape was reported, police said.

BOY, 9, HELPS POLICE CATCH SEX OFFENDER

(By Ruby Litinsky Madden)

SUNRISE.—A 9-year-old boy who police say "thought he was living Starsky and Hutch" Friday helped officers arrest a Broward School Board employee who has been charged with sexually assaulting the child the day before.

Eugene Post, 33, of the 1300 block of Boulevard of Champions, North Lauderdale, was arrested shortly after 4 p.m. when he returned—as he promised the child he would—to the corner of Nob Hill Road and Northwest 44th Street, police said.

Post has been charged with indecent assault on a minor.

Police said they placed a body bug on the child and the youngster waited on the corner where the man has encountered him and two or three of his playmates the previous day.

Lt. Peter Eckert said the man walked up to the children Thursday and asked them to go into a nearby wooded area with him to look for a lost puppy. As the children went in different directions, Eckert said the man sexually assaulted the boy.

The child reported the incident to his parents, who called police. Eckert said when police were getting details of the incident from the boy, the child said, "Oh, by the way, he told me he wants to meet me tomorrow [Friday] and give me a present."

Eckert said the child and his parents agreed to cooperate in attempting to capture the man, should he appear.

Eckert said Post is employed as a groundskeeper by the Broward County School Board but police do not know at this time exactly where he has worked.

[Fort Lauderdale News, Aug. 11, 1983]

ASSAULTS ON CHILDREN HIT RECORD HIGH—PROSECUTOR

(By Kathleen Pellegrino)

Three men were indicted Wednesday on charges they sexually assaulted children—all girls under age 11—bringing the number of pending child molestation cases to the highest ever at the Broward State Attorney's Office in the year since that office formed a special sex crimes unit.

"In the past four months it's just exploded," said prosecutor Carl Weinberg. "It may be that a greater public understanding of the crime causes the increase in reporting."

The State Attorney's Office sex crimes unit was formed about a year ago to handle cases involving all types of sexual abuse.

A growing number of the cases involve children under age 11, said prosecutor Joel Lazarus. Of about 80 pending sexual assult cases, 35 involve children, he said.

"We're getting reports from everywhere," said Lazarus. The children's parents, friends and school counselors as well as case workers from the state Department of Health and Rehabilitative Services are alerting authorities of the abuse, he said.

"We were set up to handle all sexual battery cases," Weinberg added. "It's gotten to the point that it seems like a child sexual abuse unit."

Because of the increase in cases, a third prosecutor was assigned in July to help prosecute the cases.

Indicted Wednesday were:

Vernon D. Begley Jr., 31 of Fort Lauderdale, who was charged with assaulting a 3-year-old relative four times in July.

Rafael Gonzalez, 40 of Davie, who was charged with assaulting an 11-year-old neighbor on July 25.

Bret Jano, 25, of Hallandale, who was charged with assaulting a 2-year-old relative several times.

All three men are being held at the Broward County jail without bond. If convicted, they all face up to life in prison with a minimum mandatory sentence of 25 years before they would be eligible for paroie.

This month, two men were sentenced to life in prison for sexual assaults on children.

Elius Poly, 44, of Dania, was convicted of assaulting a 9-year-old girl, and Demetrio Gabrielle, 29, was convicted of assaulting a 5-year-old girl.

[Aug. 19, 1983]

Cape Firefighter Remains in Jail on Charges of Sexual Battery

Cape Coral firefighter Thomas Connell and his wife, Carolyn, remain in Lee County Jail this morning on charges of committing sexual battery on a child.

The Connells, who reside at 198 Hugh St. in North Fort Myers, were arrested on Thursday by the Lee County Sheriff's Department while attending a court hearing at the County Courthouse. Arresting officer Sgt. Robert Macomber of the Sheriff's Department declined to comment on what type of court hearing the couple was attending, stating that it would "identify the victim."

According to department officials, Connell, 35, was charged with sexual battery and committing lewd and lascivious acts on a child. Connell's 34 year-old wife was charged with "being a principal," which means she was present during the alleged attack.

The victim's name is not being released due to the nature of the complaint.

Macomber said the Connells knew the victim and that the alleged sexual acts took place over a year.

Cape Coral Fire Chief Jim Hunt said he learned of the arrest from an anonymous telephone call on Thursday.

"I don't know who it was (that called)," he said this morning. "They told us, then hung up. I called the Sheriff's Department to (verify the information)."

Hunt said Connell has been with the department for almost three years. He was subsequently suspended from the department on Thursday pending the outcome of the charges.

"He's only been charged with it," Hunt said this morning. "And as far as his record goes he's been a good firefighter."

Hunt agreed that he was rather shocked by the news, but said it was no reflection on the local Fire Department.

"This has nothing to do with the Fire Department," he explained. "If he did it, he did it on his own."

Hunt said a standard background check was done on Connell prior to his hiring.

"As for as our background check . . . he was alright," Hunt said.

[Jan. 23, 1984]

Priest Loses Fight To Suppress Sex Testimony

The attorney for a priest accused of lewd and lascivious assaults on a 12-year-old Seminole County girl has lost part of a request to suppress testimony about the priest's past behavior during his upcoming trial.

Chan Muller, a Winter Park attorney, filed a motion for Father Eamon O'Dowd, pastor of St. Joseph's Catholic Church in Winter Haven, who is charged with two counts of lewd and lascivious assault.

The motion was intended to prevent the state from presenting evidence during O'Dowd's Feb. 6 trial concerning the 53-year-old priest's past sexual conduct.

The alleged incidents can be introduced, according to Circuit Court Judge C. Vernon Mize Jr. who granted the motion in part last week. The testimony reportedly would deal with the priest's attempts to do the same thing on previous occasions, according to Assistant State Attorney Angela Blakely. Accounts of dissimilar incidents will not be introduced, according to the ruling.

Ms. Blakeley said she wanted testimony introduced because it demonstrated examples of O'Dowd's alleged past behavior which were not examples of the expected behavior of a 53-year-old bacheor in the presence of a girl.

O'Dowd, who was born in Ireland, is charged with committing the assaults on the girl in her Seminole County home during January, 1983. The girl's mother told investigators the assaults took place about a week apart and that she heard one and saw the other. At first the mother decided not to press charges but later changed her mind.

The girl's family met O'Dowd while they were attending the St. Charles Catholic Church in Orlando. O'Dowd was assistant pastor there until May 1982.

O'Dowd turned himself in to Seminole County authorities Sept. 7. He was released the same day from the Seminole County jail on a pretrial release without posting bond.

[Jan. 25, 1984]

Police Arrest Two Men, Seek Third in Sexual Abuse Cases

St. Petersburg police arrested two men and investigated a third case Tuesday involving sexual abuse of children.

A 10-year-old girl told police that her mother's boyfriend fondled her Jan. 1 when her mother was away from home. The girl told a friend at school, who advised her to tell a counselor. The counselor notified the Florida Department of Health and Rehabilitative Services. Police have been unable to find the boyfriend, who has since moved out of the central St. Petersburg house.

Police arrested a 55-year-old man for allegedly raping his daughter when she was 8 years old, about seven years ago, and again Jan. 19, at their southwest St. Petersburg home. No more details were available this morning.

A 33-year-old man was arrested and accused of fondling an 8-year-old girl and a 7-year-old girl Tuesday at his north-central St. Petersburg home. The relationship between the man and the girls and other details were not available this morning.

Names of the men are withheld here so the girls are not identified.

[Jan. 25, 1984]

Deaf-Mute Juvenile Raped and Beaten After Meeting Man

A juvenile deaf-mute girl was the victim of sexual battery Jan. 18, police report.

Fort Lauderdale police said the girl's father brought her into the police station with a written statement. She identified the man she said raped and beat her, and Edward LaCroix Walker of Fort Lauderdale was later arrested for the crime, according to police reports.

In her statement, the girl said she met Walker at the Sunrise Pub, 1209 Sunset Strip, and later went to his Fort Lauderdale home in the 1000 block of N.E. Fourth Ave, police report.

Police said she was treated at the Rape Treatment Center.

An employee of the Sunrise Pub said both the girl and Walker were frequently seen at the bar. The employee said juveniles are allowed in the bar, but are not served alcoholic beverages.

Walker was taken to the Broward County Jail and later released on bond.

[Havana Herald Weekly 2,000, Jan. 26, 1984]

Orange Found Guilty Tuesday

Henry Lee Orange, 26, of Havana, was found guilty by a jury in Quincy Tuesday of lewd and lascivious assault on a minor under the age of 14.

Orange was arrested by the Havana police on June 3 following the May 28 incident in which he allegedly assaulted an eight year old girl.

The crime carries a maximum sentence of 15 years.

Police Accuse Man, 26, of Molesting Two Boys

A 26-year-old St. Petersburg man has been arrested and charged with molesting two 9-year-old boys within the last few months, police said.

The man's name is not being published because it might help identify the children. The suspect apparently was a family friend of one of the victims but had sexually abused both boys at a north St. Petersburg house, police said.

St. Petersburg police officers arrested the man Wednesday night and charged him with two counts of sexual battery and possession of marijuana.

The abuses took place April 28 and July 23, police said. In the July incident, police said the man molested the boy he knew while the victim's father was away.

The man was questioned after that incident but not arrested until Wednesday, police said. At that time, the father of the July victim told police he had learned that another boy who had come to his house was sexually abused at knifepoint by the man.

The man was being held in county jail late Thursday in lieu of $50,100 bail.

TEEN-AGE BOY SEXUALLY ASSAULTED

(By Alan Cherry)

LAUDERDALE LAKES.—A 16-year-old Lauderhill boy riding his bike on the way to work was sexually assaulted by an unidentified man who requested help in pulling a motorcycle out of a ditch, according to the Broward Sheriff's Office.

The teen-ager was in the 2600 block of Northwest 49th Avenue when he was approached by the man, who requested the help, said BSO's report.

The suspect led the teen-ager into a nearby wooded area when he knocked the 16-year-old down and performed oral sex on the victim, said the report.

When the teen-ager refused to reciprocate, the suspect ran to a car parked nearby and drove away, said the report.

The teen-ager was taken to a sexual assault clinic for treatment, said the report.

Deputies are investigating the possibility the suspect committed a similar crime in Sunrise earlier this month.

MAN INDICTED ON SEXUAL BATTERY CHARGE

(By Jean Marbella)

A 33-year-old Broward County man was indicted Wednesday on four counts of sexual battery against a 6-year-old girl.

John Thomas Ramey, of the 1600 block of Northeast 46th Street in unincorporated area north of Pompano Beach, had been arrested on Sept. 12.

Assistant State Attorney Carl Weinberg said the charges against Ramsey represent different attacks against the child over the past year. Each charge is punishable by life in prison.

Ramsey remains in Broward County Jail without bond.

YOUTH WORKER FACES SEX CHARGE

(By Ott Cefken)

FORT LAUDERDALE.—A volunteer worker at a county halfway house for boys was arrested Thursday on a charge of trying to entice one of them into a sexual relationship, police reported.

Police said Douglas H. Julien, 51, in accused of taking a 16-year-old to his hotel room July 19—under the pretense of picking up some money—and then offering to commit sex acts.

Booked into Broward County Jail without bond, Julien was charged with attempted sexual battery on a minor and soliciting to escape.

Senator **GRASSLEY**. Thank you, Mr. Walsh. I will turn first to the person you have praised and who is a very energetic member of this committee, Senator McConnell, for questions.

Senator **MCCONNELL**. Thank you, Mr. Chairman. I want to commend you for this outstanding piece of legislation, and also, John, to thank you for your effective testimony, as usual. The exploited and missing child unit that I set up in Jefferson County, which you are familiar with from when I was county executive, found that a huge number of the perpetrators of these crimes were in fact people who had access to children. It is elementary, as you indicated so persuasively, that when someone is about the business of perpetrating this crime, they have to look for children to perpetrate it against, and they are obviously most likely to be found in schools and churches, and so on.

So we discovered, much as you suggest, that a large percentage of the perpetrators are people who have access to children. And in the model legislation that we passed in Kentucky last year, it does provide for all youth servicing agencies an opportunity to have a records check on prospective employees. And I must tell you, I agree totally that I have never heard a good argument against it. I cannot see how in any way it infringes upon anyone's rights. And it seems to me it is elementary that we ought to provide that.

Beyond that, I want to just thank you for the leadership you have shown in the broad range of areas of crimes against children. It has been an inspiration to a lot of us down through the years, and I want to commend you for keeping the faith and continuing the outstanding work that you have been doing.

Mr. WALSH. Thank you.

Senator MCCONNELL. Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you, Senator McConnell.

Before I ask you questions, I would like to insert in the record, after my opening statement and Senator Specter's opening statement, a statement that has been submitted to me by Senator Denton on this bill.

Senator GRASSLEY. Now, you have heard the testimony today from the Department, that updating the FBI criminal files with more specific information concerning offenses against children are really State and local problems.

Now, you have alluded to 50 different fiefdoms, but I would like to have you comment on that testimony. Are these problems being addressed on the local level? If so, how? If not, how could they be addressed?

Mr. WALSH. Well, first of all, I have seen an incredible difference between the sophistication and education of law enforcement throughout the country, as the gentleman who testified for the FBI said earlier. For example, there are law enforcement agencies that are very proactive and aggressive in the battle for child protection legislation and implementing and protecting children. And then there are police agencies such as the Los Angeles Police, despite the fact that 4 years have passed since Adam's abduction and the awareness and arousal of the attitudes toward missing children in this country, they still do not look for children under 11 years old and have a cutoff age period and an arbitrary 24 hour policy and only list children in the NCIC after they have been missing 7 days.

Well, my God, a coroner will tell you that most children are murdered within 24 hours. I am making those points to you because I addressed the Uniform Crime Report Association of America and I spoke to many of those individuals who are responsible for putting together their uniform crime reports throughout the country. That was 3 years ago and at that time only one State was mandated by State legislation to keep separate crimes against children. I have talked to many FBI individuals. They said we will never know the number of crimes against children unless either the Federal Government mandates that the States report or the individual States do a better job at reporting. I looked at some of the forms.

The FBI has assisted the best that they can to teach states to implement better reporting systems, but I have heard from individuals in the Uniform Crime Reporting thing such as, well, we only feel one in 10 crimes are reported. In some States it is not mandatory. If a mayor is up for reelection, he will say to the chief of police, you know, we are going to look really bad if you put all these crimes in here. Let us reduce it down to a certain number because I am up for reelection. You will not have a job 2 years from now if you report 37 sexual assaults and 22 missing children.

There are all kinds of ways to beat that. I talked with a police officer in Leewood, KS, who asked me to spend the day with a little girl who was badly raped, her throat slit ear to ear, left in a field for 14 hours. She wanted to talk to me because she had seen the movie "Adam," and when I got to meet with her she said, "you know, Mr. Walsh, no one wants to look at me. No one wants to deal with me because I have this horrible scar ear to ear." She said, "I am just another victim and I make people uncomfortable." And she said, "when this man abducted me, he threw me in the car and I was crying horribly because he threw me in and the gear shift split my mouth open." And he said, "shut up or I am going to murder you."

And she said, "You do not know how scared I was." And I said, "I cannot imagine how scared you were." She said,

> But what could I do? I was just a kid and I am having trouble in school and I cannot relate to men because I am just a kid. And I feel powerless, and I feel victimized, and I need help.

And I said,

> Well, not all men do what that man did to you. And we will try to help you. I will try to help you. But do the best you can in school, and become a State Senator or a U.S. Senator or do something. Become a woman in the system and try to change the system because the system is predominantly men and they really have not dealt with this issue.

But that meeting made me furious. So I went back to the law enforcement officer in charge of that case, and I said, "Let me ask you something: Tell me about this. Has the FBI gotten involved?" He says, "No. I have asked them many times."

I said, "Why have you asked them?" He said, "Because this individual calls me long distance every 6 months and says he is still out there raping children. We have no idea who he is."

I said, "Did she make it into any type of statistics? Was she in the NCIC as a missing child." He said, "No." I said, "Was she not missing?" He said, "Absolutely, for 18 hours. Her parents were frantic." I said, "Was it not a horrible assault?" He said, "Yes, but I did not even know you could enter those type of cases. I do not know where to put that report. We listed her as a felonious assault." I said, "Another child that has fallen through the cracks, another child that never made it into any statistic, just another unsolved assault. Right, officer?"

He said, "If I knew better, Mr. Walsh, I would do something about it, but I do not know who to report it to and I do not know who to call in the FBI and I do not know what to do." He said, "I am a Leewood, KS cop." And he says, "I did not have a chance to solve this crime."

That is the point I am making to you. I have seen the system from the inside out. It does not work. In the State of New York there are 610 police agencies. In the State of Florida there are 320 police agencies. We have had these hearings before, but there is no exchange of information.

And there are a lot of misconceptions about the FBI. The Los Angeles police department and Darrell Gates has more uniformed officers in Los Angeles than there are FBI field agents; only about 8,000 FBI field agents, I guess, by estimate. There are only certain things they can do. And I have been back before this committee saying you should give the FBI more money, more authority, more training, especially in these crimes. And the FBI has supported me on many of those occasions talking about mobile and serial murderers who can roam coast to coast and kill 30, 50, 100 women and children because of lack of exchange between law enforcement.

They should bring every law enforcement officer through Quantico once a year, but that is not feasible. But there should be more done and more allocated, and maybe we will know it sometime, the crimes against children and the people who prey upon children. Maybe the FBI can assist States at some time if they have more resources.

Senator GRASSLEY. Do you agree that the current policy of not disseminating arrest records of more than 1 year old that have no disposition is a problem for us?

Mr. WALSH. I agree; it is a problem. I use one case in particular, Theodore Frank, who is a long time convicted pedophileia, 33 arrests, seven convictions, et cetera. Somehow his records did not show up in certain areas. He had convinced psychiatrists and psychiatric counselors in Tuscadero that he was a cured pedophileia. Six weeks after his release he tortured and murdered 2 year old Amy Sue Sykes in California. He beat the system repeatedly.

But he is an indication; of those 33 arrests, he was only convicted seven times, and those seven times he plea bargained down. I think, especially in the testimony and preparation of the analysis of this legislation by Big Brothers and Big Sisters and other organizations, an arrest record of an individual—and many times, if he has been arrested 30 times, no matter whether he has come to trial or not, is a pretty good indication that he may be a child molester of some sort.

But, as the FBI agent said, "Some of the cases are not settled for 5 years. So that person could work with children." My personal feeling is that the records should be released, and the determination can be done, as certain States have, based upon the conviction record or prohibiting that person from working in certain occupations, not prohibiting them from working in many, many occupations, based on the arrest record and the number of convictions.

Senator GRASSLEY. Well, then would you suggest how the procedure should be changed so this problem——

Mr. WALSH. I do not know. I have thought about it, and in all honesty I do not know. I have had a couple of meetings recently with Attorney General Meese, some private meetings, and we talked about some of these problems and the lack of response by the Justice Department and the FBI because of their hands being tied and lack of resources.

And I do not know if we have technically worked that out yet, but we are trying to.

Senator **Grassley**. My questioning is finished. I thank you. I have to call a recess for about 10 minutes while I go vote. The purpose of the recess is because of the vote on what we call the Abdnor amendment on the Superfund bill. So stand at ease for about that long a period of time. I will hurry right back. Mr. Walsh, please submit any further evidence you have for the record.

[Brief recess.]

Senator **Grassley**. Our next witness is Gregory Loken. He is the executive director of the Institute for Youth Advocacy in New York City. This was established as part of Covenant House in 1982. The institute devotes its resources and energies to fighting exploitation of homeless and runaway children and seeking ways to prevent the desperation that originally forces so many of these young people into the streets.

He is a graduate of the Harvard Law School. And of course, the reason for his being here is because he played such a valuable role in the legal battles leading to the Supreme Court's landmark decision that we refer to as the *Ferber* case.

I would ask you to proceed. I thank you for being patient while I went to vote.

STATEMENT OF GREGORY A. LOKEN, EXECUTIVE DIRECTOR, INSTITUTE FOR YOUTH ADVOCACY

Mr. **Loken**. Mr. Chairman, thank you. I am humbled to be in the presence this afternoon of so many distinguished advocates for children and very grateful for your kindness in asking me to appear. Oscar Wilde once remarked that no good deed ever goes unpunished, but I do not intend to punish your kindness by reading my entire written statement to you. So, I would ask that it be made part of the record, if I may.

Senator **Grassley**. It will be as a matter of standard procedure, but we appreciate also your summary.

Mr. **Loken**. Mr. Chairman, my job involves in part the counseling of children who have been sexually exploited, and also in part the study of various approaches to helping those children, both legal and nonlegal. It is thus with great pleasure that I address the subcommittee on the merits of Senate bill 985 today, because that bill represents a highly significant legislative effort to protect children vulnerable to use in child pornography.

Because of time restrictions, I would like to limit my remarks today to the proposed amendments to Federal RICO statutes, since those provisions seem to me to be the heart of the proposal and the most significant in the protection of children.

The potential importance of RICO is clear and compelling, and I was very gratified today by the testimony of the Department of Justice supporting the amendment you propose in this area. I would note at this point that RICO now covers obscenity that includes adults, and it covers child prostitution. But to date it has not covered child pornography, which represents enormous anomaly in the Federal law in this area.

The importance of RICO is easy to see if we look carefully at the nature of the child pornography industry. First of all, it is important to note the organized character of at least a part of that industry. Specifically, I would refer to the study of Ann Burgess, a distinguished student of the problem of child pornography and prostitution, who in a federally funded study looked intensively at 55 child sex rings.

She found that over 30 percent of the rings were syndicated; that is, they involved a well structured organization formed for recruiting children, producing pornography, delivering direct sexual services, and establishing an extensive network of customers.

Other recent cases involve Vancouver detectives who discovered a child pornography operation involving 24 young boys, some of them shipped between California, Utah, and Canada, and all for the production of commercial child pornography. In another recent case, a Florida prison inmate apparently ran an international child pornography ring from his prison cell.

The child pornography industry is not only organized, it is potentially very lucrative. One recent case involved a lady by the name of Cathy Wilson who operated a business of $500,000 a year in distributing child pornography. I would refer the subcommittee as well to the factual findings in the case of *United States* v. *Langford,* 688 F.2d 1088 (7th Cir. 1982). There the circuit court confronted a commercial chain of child pornography in which the perpetrator was requesting the processing of 800 to 5,000 prints per month. Potential profits in an area like this are enormous, and it is clear that at least part of the child pornography industry is cashing in.

The final critical element in the case for including child pornography in RICO is the fact, as Mr. Walsh so tellingly pointed out in his testimony, that in the child pornography industry people misuse legitimate roles in organizations to abuse and exploit children.

Of course, as we all know, the original purpose of RICO was to prevent the infiltration of otherwise legitimate organizations by people interested in committing the crimes designated by 18 U.S.C. 1961. Thus, RICO could be a very powerful tool in this area in several respects. RICO could first of all make sure that we have differential sentencing of large-scale operations—that is, those who organize their activities and operate them for profit would be subject to higher penalties than those who simply traffic in small-scale child pornography.

Second, RICO would allow us to get at those who are only indirectly involved in child pornography for the profits involved, something which the current law does not do.

Finally, RICO would deter the infiltration of legitimate youth activities, like the Boy Scouts, like the ministry, by those who are interested in exploiting young victims. I agree that most child pornographers are not tightly organized, and I agree that most are not motivated by profit. But clearly a large minority are, and it is to attack them that RICO could be so important.

Now, in discussing RICO's value, I would be remiss if I did not mention the potential importance of RICO for compensating victims of exploitation through pornography and prostitution. The proposal that you have included in Senate bill 985, which would allow the recovery of personal damages as well as property or business damages by children who have been exploited in prostitution or pornography, is a critical feature of the bill—and I urge you not to relinquish it despite oppostion from the Department of Justice.

To me that opposition is particularly disappointing because it fails to take account of the peculiar nature of harm to children used in prostitution or pornography. The harms they suffer are specifically psychological and specifically long term. And these are the types of harms that do not occur in other types of RICO offenses.

Further, the Justice Department's belief that other types of restitution programs and victims' assistance programs will compensate children is, I think, misguided, at least on the basis of current law. For example, the Victims of Crime Act of 1984 is limited generally only to victims of State crimes. Federal crime victims can obtain money for court-related services—for example, forensic medical exams. But there is no money in that bill for compensation of victims of Federal crimes such as would be included here.

Further, the assistance is generally limited—and this applies not only to the Victims of crime act, but to the restitution provisions of the Victim and Witness Protection Act—to out-of-pocket expenses or medical expenses, resulting from bodily injury. Since a large number of victims of child pornography do not suffer actual bodily injury in the strict sense when they are used in pornography, they would find compensation unavailable to them under this Federal scheme. I would point out to the subcommittee as well that State victim-compensation schemes—and in particular I speak of the New York scheme—are generally limited only to out-of-pocket expenses. Those State programs generally will not compensate a child for the long-term damage he suffers from the sexual abuse in the making of child pornography and the long-term exploitation of that pornography by its purveyors.

Senator GRASSLEY. You do not believe, then, as a way of summarying just to this point, that there is adequate victim compensation?

Mr. LOKEN. Not in this area, Mr. Chairman, because as the Supreme Court recognized in the *Ferber* case, the damages that children suffer may actually be greater after the pornography is made than they are at the time of its making. The knowledge the child carries with him, that this pornography is going to be shown again and again and again, may be far worse for him than the actual sexual abuse.

Senator GRASSLEY. As far as personal property interest being included, would you include parents' pain and suffering?

Mr. LOKEN. That is something that is not specifically mentioned in the bill. I would suspect in the current wording of the bill that parents would not be able to have a remedy there, but I think that would be something open to appropriate judicial interpretation. I think the courts may be in a very good position to judge the merits of those kinds of claims when they are brought.

In terms of the whole question of judicial confusion that is likely to result from amending RICO to permit personal damages in this type of case, which is a point raised by Ms. Toensing, it seems to me there would be far more confusion if the subcommittee does not include the provision for personal injury damages. As we know, courts are going to strain to try to compensate a child who has been victimized in child pornography. It seems to me that the courts may very well try to read the damage-to-property-or-business-interest provisions to include such traditional property interests as reputation. If the courts start extending the property provisions of the RICO code to include that type of injury to victims of child sexual abuse and child pornography, it could indeed cloud the law of RICO in other areas.

Because the subcommittee is taking, I think, a very surgical, very clear approach to the question of damages in this area, there is not going to be judicial confusion, and I urge you to retain that provision.

In sum, the Federal effort against sexual exploitation of children is less than 10 years old, and it is only since the passage of the Child Protection Act of 1984 that the Federal attack on child pornographers has truly begun to bear fruit.

Now, through the use of RICO we can provide the Federal Government with an opportunity to enhance its law enforcement capabilities and provide child victims at least one forum in which they may seek redress.

Senator **Grassley**. You are very perceptive because you answered a lot of specific questions I was going to ask, one of which I already interrupted your testimony with. My first question: Whether or not from your point of view it would be a positive modification if S. 985 was expanded to allow recovery for personal injuries in child prostitution cases under RICO?

Mr. **Loken**. Mr. Chairman, I think that the inclusion of child prostitution is an excellent feature of RICO. In terms of some of the concerns of the previous witness on the exclusion of such personal-injury crimes as murder from the RICO statutes, it might be appropriate—perhaps not in this bill but at a later time—for the Congress to look seriously at expanding the damage provisions of RICO for very specific crimes like murder, which are not likely to involve property or a business interest. But I do not think that that should be a bar to your taking action in this area.

Senator **Grassley**. What would constitute an enterprise in the child pornography area under RICO?

Mr. **Loken**. Well, there are many examples of that, but certainly the syndicated sex rings that Ann Burgess found would virtually all constitute enterprises within the format of RICO, particularly because the United States Supreme Court in the *Turkette* decision several years ago extended RICO's coverage to include illegitimate operations as well as legitimate operations. So, it does not matter that you are forming your activity for an illegal purpose; you are still under RICO.

That was an early confusion in the area that the Supreme Court cleared up for us. During this last year, of course, the Supreme Court cleared up massive confusion in the RICO area in the *Sedima* case. And it seems to me at this point that there is relatively little likelihood of substantial judicial confusion in dealing with RICO.

I think that the concern of the Justice Department in this area may have more to do with the political controversy regarding RICO and its reach into areas that seem to be normally the province of State law.

Senator **Grassley**. What about the indirect involvement of people such as promoters or financiers?

Mr. **Loken**. Those people, of course, could be part of an enterprise. Of course, under current Federal law they might not be actually involved with any of the specific activities that constitute a child pornography offense. If they are simply financing the operation, they are not actually the distributors or the producers of the child pornography. So, they would not be liable under the current criminal statutes.

Senator **Grassley**. What about individuals associated with legitimate groups such as the Boy Scouts or Big Brothers?

Mr. **Loken**. Mr. Chairman, those people would clearly be liable, and solely perhaps because they are using a legitimate organization to get at child victims.

Senator **Grassley**. I would like to have you tell me how the forfeiture provisions differ under RICO from the 1984 act?

Mr. **Loken**. I think actually the forfeiture provisions are very similar, and, as I understand it, the Congress used the RICO forfeiture provisions as the model for drafting the 1984 changes. So, they track very nicely; I think it was a very good idea to have specific provisions related to child pornography in the statute that passed last year.

Senator **Grassley**. You have indicated that an added weapon under RICO is the ability of the Attorney General to make broad civil investigative demands on pornographers. Could you elaborate on the procedures and under what circumstances this could be done?

Mr. **Loken**. RICO does allow the Justice Department to institute civil, equitable actions against those who have committed two predicate offenses as part of an enterprise. What that allows is a sort of discovery that is not possible in a criminal setting, and it also allows what you noted in your opening statement, the issuance of an injunction on the Federal level that will stop distribution of a particular piece of child pornography nationwide, which is not currently available to victims unless they go to 50 different States.

Senator **Grassley**. There has been legislation introduced in this Congress to make a prior criminal conviction of a predicate offense a prerequisite to bringing a civil suit under RICO. How would this affect prosecutions for child pornography under RICO?

Mr. **Loken**. It certainly would have a detrimental effect because, as previous witnesses, including Mr. Walsh, have noted, it is particularly difficult to get convictions in the area of the abuse of children. So, there are going to be a relatively limited number of people who have prior convictions in this area.

And so it would limit RICO's reach substantially. I would hope that if the Congress adopts S. 985, Mr. Chairman, and if Congress decides as well to establish a standard of predicate convictions for RICO civil actions, that child pornography or child prostitution offenses will be specifically excepted from the predicate conviction requirement.

Certainly, one of the superb features of your proposal is that a victim of child pornography can go into court, sue the pornographer and not have to meet the standard of proof beyond a reasonable doubt in establishing predicate offenses. That standard is an overwhelming one for them to meet in a normal criminal setting. So, this proposal opens the courts to child victims in a way that few others would.

Senator GRASSLEY. My last question is: What effect would legislation that has been introduced have on child pornography cases that would make a specific racketeering injury a prerequisite to a civil suit?

Mr. LOKEN. That particular proposal, as I understand, is designed to limit the reach or the RICO statutes to traditional organized crime, La Cosa Nostra and the Mafia. I think that that could have as well a detrimental effect in this area because the Justice Department is certainly correct in noting that traditional organized crime, the Mafia, have not been shown to be extensively involved in child pornography.

I do not think that the Department has emphasized sufficiently how highly organized at least part of the child pornography industry is. But we do not know that the organization comes out of traditional organized crime. The proposal for including only traditional organized crime under RICO could, I think, dilute the effectiveness of this proposal in helping children.

Senator GRASSLEY. That is my last question. Do you have any further summary that you would like to give us?

Mr. LOKEN. I hope that you are able to obtain the enactment of the RICO provisions of S. 985 because I think you have done an admirable job in drafting them. I support you wholeheartedly in your effort.

Senator GRASSLEY. Well, you know you kind of helped open the door for all of this with the *Ferber* case. Thank you a lot as well.

Mr. LOKEN. With great pleasure.

[Prepared statement follows:]

PREPARED STATEMENT OF GREGORY LOKEN

Mr. Chairman and Members of the Subcommittee: It is an honor and a pleasure to appear before you today to discuss, on behalf of Covenant House and the Institute for Youth Advocacy, the merits of S.985, the "Child Abuse Victims Rights Act of 1985," currently before you. The Subcommittee on Juvenile Justice has long played a key leadership role in federal efforts against the sexual exploitation of children: most recently the enactment of the Child Protection Act of 1984 was due in large part to the creative, thoughtful work of the Subcommittee's members and its excellent staff. Your consideration of this proposal today and your hearings last fall on your Chairman's related, complementary proposal, the "Pornography Victims Protection Act" (now S. 1187), are further, powerful evidence of your continued concern for protection of children from one of our nation's ugliest blights.

Covenant House, of course, is also dedicated to protection of children vulnerable to sexual exploitation and all the other nightmares which attend life on the street. Our programs in New York, Houston and Toronto last year provided some 18,000 children with crisis shelter and a variety of services from health care to family counselling to job development to legal services. There are only two criteria for admission to our program: being under the age of 21, and being in need of help. While it is perilous to make estimates in areas of highly private, often illegal behavior, we believe that one-half or more of the children who come to us have been sexually exploited at home or on the street, a substantial minority exploited in pornography.

Part of our response to the needs of children on the street for protection and help was the creation of the Institute for Youth Advocacy in 1982. As Covenant House found itself besieged with enormous demands for crisis services for homeless and runaway children, Fr. Bruce Ritter, its President and founder, recognized the need for broad-based advocacy on behalf of all children so endangered. The Institute attempts to fight for that often forgotten and politically helpless population, which every year numbers some one million children. Among the Institute's chief goals is the forging of comprehensive federal and state efforts aimed at eliminating sexual exploitation of the young.

The bill before you today represents, in our view, a valuable addition to those efforts. While not prepared to comment on the merits of every section of the bill - the proposal for imposition of the death sentence in cases of child kidnapping/murder, in particular, presents moral and practical issues beyond my capacity to review in the time alloted - I will focus my attention primarily on what is clearly its most valuable feature, the inclusion of child pornography among the offenses covered by the federal Racketeer-Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO").

In 1978 Congress included interstate trafficking in child prostitution among the crimes giving rise to RICO liability. Omission of such coverage for trafficking in child pornography may have simply been an oversight at that time. In any case we at Covenant House have consistently supported inclusion of RICO coverage of child pornography offenses for several reasons:

1. Without the ability to apply RICO to production and distribution of child pornography, prosecutors will have no basis for seeking more serious penalties against those who are involved in the "kiddie porn" industry in an organized or for-profit context. The Child Protection Act of 1984 ironically exempted commercial purveyors of child pornography from special punishment even as it made convictions of occasional, informal distributors of child pornography easier.

2. The availability of RICO prosecution for child pornography offenses in appropriate cases could be enormously valuable in discouraging pedophiles from infiltrating legitimate youth organizations (scout troops, summer camps, etc.) for the purpose of sexually exploiting the children served.

3. If RICO were expanded to embrace prohibitions against trafficking in child pornography, it would finally be possible to obtain nationally enforceable injunctive relief against distribution of the material. Under current law children must wait for a criminal prosecution to occur before they can obtain effective protection against such distribution. Such delay can mean the material is irretrievably lost in the underground, international network of child pornography.

4. The victims of sexual exploitation - children who have been severely damaged by abuse in the making of pornographic material - have at present only ineffective and spotty remedies under state law, and no remedy under federal law. Application of RICO to child pornography would give those children the same civil remedies for damages against those who profit from their abuse as is currently enjoyed by victims of unfair commercial practices in the antitrust context. Given the recent expansion of RICO to cover cases involving adult pornography, as well as its application in relatively innocuous contexts as the sale of contraband cigarettes, it seems only appropriate to provide comparable protection to children who have suffered one of the cruelest outrages imaginable.

Because of the complex character both of the RICO provisions and of the child-pornography problem itself, it is worthwhile discussing that reasoning in some depth. More specifically it is useful to review current provisions of federal law which attack the phenomenon of "kiddie porn", along with those portions of RICO most likely to be important if child pornography is included among that act's "predicate offenses." Against that backdrop it is possible to weigh RICO's potential both as a prosecutorial tool against child pornographers and as a private civil remedy for children so victimized.

I. FEDERAL CHILD PORNOGRAPHY LAWS

After extensive hearings which documented beyond serious dispute a shocking, rapidly mounting tide of child pornography, Congress in 1978 approved the Protection of Children

Against Sexual Exploitation Act, now codified as 18 U.S.C. §§2251, et seq. (the "Act"). Under its terms the production of child pornography for mailing in interstate commerce became criminal. As originally written, however, the Act prohibited distribution of child pornography only if it was commercial in character, and, as a hedge against the First Amendment, only if the material was legally obscene. So crippling were these limitations on the reach of the Act that by the end of 1982 only sixteen convictions had been obtained under its provisions.[1]

In that same year, fortunately, the Supreme Court cleared away any doubts about the First Amendment's irrelevance to child pornography. In New York v. Ferber, 458 U.S. 747 (1982), a case in which Covenant House participated as amicus curiae both on the federal and state levels, the Court declared flatly that child pornography, even if not legally "obscene" under the standards of Miller v. California, 413 U.S. 15 (1973), is outside the protection of the First Amendment. The Court recognized the special harms to children resulting, respectively, from the production and the circulation of "kiddie porn" and unanimously upheld the conviction of Paul Ira Ferber - who had sold two films depicting young boys engaged in masturbation.

In response to that decision Congress two years later adopted the Child Protection Act of 1984, which made several substantial improvements in the Act: (1) elimination of the "obscenity" requirement ruled as unnecessary in Ferber; (2) removal of the limitation in the Act's reach to commercial distribution of child pornography; (3) revision of the maximum age of children protected by the Act from 15 to 17; (4) inclusion of child pornography offenses among those for which wiretapping investigations may be commenced under 18 U.S.C. §2516; and (5) addition of criminal and civil forfeiture proceedings to the government's arsenal in sexual exploitation cases. These revisions have already worked a nearly miraculous change in the effectiveness of federal law enforcement: during 1984 and the first month of 1985, nineteen convictions under 18 U.S.C. §2252 (prohibiting interstate distribution of "kiddie porn") were obtained, compared with seventeen such convictions for the entire period from 1977 through 1983. [2]

II. RELEVANT SCOPE OF RICO

Enacted as Title IX of the Organized Crime Control Act in 1970, RICO was aimed at organized criminal activity that derives power "through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, *and other forms of social exploitation*". 84 Stat.922. (Emphasis supplied). Congress intended, in adding RICO to the federal arsenal against crime, to attack all such criminal combinations "without limitation or reference to traditional notions of organized crime". *United States v. Barber*, 476 F. Supp. 182,186 (S.D.W.Va. 1979).[3] RICO, indeed, has been applied to relatively routine real estate swindles, local police corruption, and fraudulent commodities trading. [4]
A member of the insurance bar recently urged his industry to use the statute as a weapon against false insurance claims and fidelity bond losses. [5] Congress itself reaffirmed the necessity of an expansive role for RICO when in 1978 it added "trafficking in contraband cigarettes" to the types of activity to which RICO may apply. Act of Nov. 2, 1978, P.L. 95-575, §3(c), 92 Stat. 2465. This past fall it went a step further by adding federal obscenity violations to the list of RICO predicate offenses, Act of Oct. 12, 1984, P.L. 98, 473, §§ 901(g), 1020, 98 Stat. 2136, 2143; as well as federal prohibitions against interstate trafficking in stolen motor vehicles. Act of Oct. 25, 1984, P.L. 98-547, §205, 98 Stat. 2770.

In the context of the sexual exploitation of children, one central provision of RICO is likely to have the most direct relevance. That statute makes it a crime for any person

> employed by or associated with *any enterprise* engaged in, or the activities of which affect, interstate or foreign commerce, to conduct, to participate, directly or indirectly, in the

> conduct of such enterprises' affairs through a pattern of racketeering activity or collection of unlawful debt.

18. U.S.C. §1962(c)(emphasis supplied). "Enterprise" as used in RICO embraces any association or group of individuals, whether formally constituted or not, and whether formed for legitimate or for criminal purposes. 18 U.S.C. §1961(4); United States v. Turkette, 452 U.S. 576 (1981). "Pattern of racketeering activity" means the commission of two of the crimes listed in §1961(a), which range from serious state crimes to such federal offenses as mail transmission of gambling information and interstate transportation of stolen property, in a manner which shows the "continuity plus relationship" of the acts. Sedina, S.P.L.R. v. Imrex Company, Inc., _____ U.S. _____, 53 U.S. Law Week 5038 n. 14, quoting S. Rep. No. 91-617, p. 158 (1969) (emphasis added). When Congress passed the Protection of Children Against Sexual Exploitation Act in 1978, it included new prohibitions against interstate transportation of minors for the purpose of prostitution or prohibited sexual conduct: that offense was included, then, among the criminal offenses defined as "racketeering activity" under RICO. 18 U.S.C. §§ 1961(1), 2423.

If production and distribution of child pornography were included along with child prostitution among the offenses defined as "racketeering activity" under RICO, the consequences would substantially affect both the criminal and civil liability of "kiddie porn" traffickers. Those who engaged in a pattern of child pornography distribution as part of a business or other "enterprise" would be subject to criminal penalties of up to twenty years imprisonment, forfeiture of any property acquired as a part of that enterprise,[6] and a fine of up to $25,000. 18 U.S.C. § 1963. In addition, such offenders would be liable for treble damages to anyone injured as a result of such activity, including a reasonable attorney's fee.[7] 18 U.S.C. § 1964(c). Injunctive relief, finally, would be available against child pornography purveyors - to force them to divest themselves of their holdings used for that purpose and to impose "reasonable restrictions on [their] activities". 18 U.S.C. § 1964(a). Other provisions of RICO, while of less importance than these, might occasionally be employed against "kiddie porn" merchants as well: such as the provisions permitting the Attorney General to make broad civil investigative demands on those suspected of engaging in a pattern of prohibited conduct. 18 U.S.C. § 1968. It is on the merits of its criminal and civil remedies in the context of child pornography, however, that RICO's full integration into the federal assault on sexual exploitation of children must stand or fall.

III. RICO AS A LAW ENFORCEMENT TOOL AGAINST SEXUAL EXPLOITATION

Careful charting of the subterranean world of child pornography suggests the particular usefulness of legal weapons, like those contained in RICO, designed to attack organized criminal activity.

A. Nature of "Kiddie Porn" Economy. Recent commentary on the problem of child pornography has tended to emphasize that most of it is "homemade" and not distributed for commercial purposes.[8] That emphasis is understandable not only because of the need to correct earlier misunderstandings of the nature of the pedophilic subculture but also because of the grievous need to eliminate the crippling "for pecuniary profit" element from federal prosecutions for sexual exploitation.[9] Recognition of those facts should not obscure three critical features of the world of child pornography: it is criminal activity organized in character, always at least potentially lucrative, and often based in the misuse of respectable youth organizations.

1. "Organized" Character. Sexual, pornographic exploitation of children does not occur in isolation: as the F.B.I. found, it is the basis for a "clandestine subculture".[10] At the present time it is not possible to say whether "organized crime" as such is involved in that subculture, but it is impossible to ignore the fact that the F.B.I. has made child pornography investigations the responsibility of the Organized Crime Section of its Criminal Investigative Division.[11] Outside of traditional "organized crime", such groups as the Rene Guyon Society, the North American Man Boy Love Association

("NAMBLA"), Childhood Sensuality Circle, and the Pedophilic Movement all advocate for sexual exploitation of children; of those groups NAMBLA at least has been concretely linked with systematic promotion of child molestation and pornography.[12] On a less formal level, sexual exploitation of children "is organized in the sense that these people exchange young boys and young girls, and exchange films and pictures, and travel throughout the country making these exchanges".[13] The organization is not necessarily the result of an agreement among the participants; rather the pedophilic "subculture" has produced a complex, highly integrated structure for obtaining, reproducing, "laundering", and circulating child pornography.[14]

A recent, intensive analysis of 55 child sex rings strongly confirmed the organized character of the child-pornography subculture. Over 30 percent of the rings studied were found to be "syndicated": that is, they involved "a well-structured organization formed for recruiting children, producing pornography, delivering direct sexual services, and establishing an extensive network of customers." [15] In one recent case two Vancouver detectives discovered a child-pornography operation involving 24 young boys, with some of them shipped between California, Utah, and Canada - all for the production of commercial "kiddie porn".[16] In another, a Florida inmate apparently ran an international child-pornography ring from his prison cell, with help from associates as far away as Seattle.[17]

2. Commercial Element. This structure can produce, moreover, extraordinary profits. So it is that the "focus of the F.B.I.'s child pornography/sexual exploitation of children investigations is aimed at curtailing large scale distributors who realized substantial income from multi-state operations ....."[18] The one reported decision construing the Act concerned a perpetrator who was "a part of a commercial chain of child pornography," and who "requested a special price [from the photography laboratory] due to his volume" - *i.e.*, 800 to 5000 prints per month. *United States v. Langford*,

688 F.2d 1088, 1097 (7th Cir. 1982). The most recent scholarly commentary on the subject concluded:

> In the past, sexual exploitation of children was closely linked with a perpetrator's personal, deviant need. But in recent years it has evolved into a pornography industry capitalizing on interests of a growing clientele. This new and more pernicious incentive to sexually exploit and abuse children derives from a profit motive. The commercial side of child pornography continues to gain acceptance and resources to resist law-enforcement efforts. Because of increased pressure from legislation and child-protection groups, most of this commercial traffic has moved underground.[19]

An excerpt from the trial transcript of a recent child pornography case in New York City may illustrate the profit motive more starkly. Scott Hyman, convicted March 2, 1983, of distributing "kiddie porn" under the New York law upheld in Ferber, told an undercover policeman that it was easier to obtain films of very young children than films of older adolescents because the older children start wanting a share of the profits:

> Hyman: "Well what happens is with kiddie porn, you can get 7, 8, 9, 10 and 11-year-olds. Soon as you start trying to find 15, 16, 17-year-olds, you've got trouble.
>
> Officer: "They're easy?"
>
> Hyman: "No problem."
>
> Officer: "That's fine. That's what I'm interested in."
>
> Hyman: "Yeah, at that point (with older kids) you've got a kid that just came out of his childhood. He's in the middle (years), knows what you're doing and can make the money himself."[20]

The $500,000-a-year mail order business in child pornography operated by Catherine Wilson in Los Angeles is a classic example of how lucrative the business can be.[21] Her case also demonstrates how unfairly the revised child pornography statutes can discriminate against non-commercial offenders: the 10-year sentence Miss Wilson received is the same as may be applied against any person casually passing along child pornography on a one-time basis.[22] Application of RICO to Miss Wilson's case would have allowed prosecutors to seek penalties more justified by the outrageous extent of her criminal conduct.

Congress was therefore amply justified in concluding that "[c]hild pornography and child prostitution have become highly organized, multimillion dollar industries that operate on a nationwide scale."[23]

3. Misuse of Legitimate Roles. One final aspect of the structure of the child pornography industry is crucial but sometimes understated. In his recent testimony before the Subcommittee on Crime, the Assistant Chief Postal Inspector described that aspect well:

> Only rarely does the child pornographer measure up to the stereotype image of the "dirty old man." Many of those displaying an interest held respected positions within their communities and have been able to conceal their interest in child pornography for years. There have been the professional dealers identified in our investigations, but there have also been clergymen, teachers, psychologists, journalists, and businessmen.[24]

Child molestation and pornography, in short, thrive on the misuse of respectable roles within legitimate organizations providing service to children.[25] Thus the roster of "kiddie porn" purveyors includes scoutmasters, probation officers summer camp operators, ministers and priests.[26] Any effective attempt to suppress such material, therefore, must include some specific tool to combat the corruption of legitimate youth-related organizations.

B. Potential Impact of Rico. Against this backdrop the danger of placing too little emphasis on halting organized commercial child pornography is all too apparent. In the context of prosecutions for sexual exploitation of children RICO's provisions offer the following advantages:

1. Differential Sentencing of Large-Scale Operations. Because the Child Protection Act of 1984 removed the commercial-purpose requirement, the Act allows imposition of full 10-year prison sentences for an isolated act of distributing child pornography. Commercial or organized child pornography trafficking no longer has any special penalty attached to it. If such trafficking were listed as a RICO predicate offense, however, those who made an "enterprise" out of child pornography would be liable for higher penalties: up to twenty years imprisonment, plus criminal and civil forfeiture of all

their interest in, and profits from, the "enterprise". 18 U.S.C. § 1963.

2. Penalty for Indirect Involvement in Child Pornography. Because child pornography operations can be highly complex, a prohibition which reaches only those who produce, receive or distribute such material may fail to touch those who mastermind, finance and promote such operations. The concept of "enterprise" in RICO is a very broad one,[27] and its target is indeed the "big fish" of criminal operations who are so difficult to catch in traditionally defined criminal acts.[28] Harmonizing that aspect of RICO with the Congressional assault on child pornography could substantially deter organized crime and other potential financiers from involvement in sexual exploitation.

3. Deterring Infiltration of Legitimate Youth Activities. Perhaps the most important motive for enactment of RICO was the perception that criminal elements threaten "to infiltrate and corrupt legitimate business".[29] The expansive definition of "enterprise" which Congress adopted evidenced a desire to prevent the use of any "group of individuals associated in fact" for criminal activity.[30] Thus RICO would allow special penalties to be imposed upon the scoutmaster or clergyman who misused his position of trust to engage in a pattern of sexual exploitation. One who was tempted to abuse his role in a legitimate youth organization to lure children into pornography would know that such conduct could produce a 20-year jail term in addition to the penalties for mere production of "kiddie porn". By itself the current Act does not single out such violations of trust for more severe punishment.

IV. CIVIL RICO AS METHOD OF PROTECTING AND RECOMPENSING VICTIMS OF SEXUAL EXPLOITATION

From the standpoint of an organization, like Covenant House, devoted to the direct care of children, the law enforcement advantages of RICO in the context of child pornography, while undeniably attractive, pale before its usefulness as a way of helping the victims of such exploitation. The devastating harms which children used in pornography suffer are now beyond serious dispute; according to all recent scholarship, and simple common sense, such an experience is "extremely damaging".[31]

Yet as the law presently stands those victims have no effective recourse against their abusers, either to obtain damages or to prevent circulation of the material in which they appear. They are at the mercy of federal prosecutors, whose priorities may not include immediate prosecution of difficult, expensive cases. The civil provisions of RICO would allow children (and parents) direct access to the courts to pursue child pornographers for damages and perhaps as well to enjoin distribution of damaging products of their exploitation.

A. Civil Action for Damages. Integration of RICO with the Act would give victims of a pattern of sexual exploitation the right to sue their abusers for treble damages plus a reasonable attorney's fee. 18 U.S.C. § 1964(c). The treble-damages provision of RICO was modelled after those in antitrust statutes, and was conceived for the same purpose: to encourage private ("attorneys' general") enforcement of a critically important statute while recompensing the victims of illegal conduct.[32] In the context of sexual exploitation such encouragement is sorely needed, for sexually abused children and their parents are usually quite reluctant, and for good reason, to suffer exposure in open court of highly traumatic events. [33] As the Supreme Court recently intimated, private RICO actions would probably not face the formidable beyond-a-reasonable-doubt standards for proof applicable to criminal trials, Sedina, S.P.L.R., v. Imrex Company, Inc., _____ U.S. _____, 53 U.S. Law Week 5034, 5037 (Docket No. 84-684, 7/1/85); thus victims of sexual exploitation might succeed in court where prosecutors fail. As for recompense, surely the victims of a commercial enterprise in interstate commerce based on sexual exploitation deserve as much compensation for their injuries as the victims of adult obscenity or white-collar crime.

B. Injunctive Protection. An equally important potential advantage of RICO for child pornography victims is its grant of jurisdiction to district courts to issue injunctions against those who have engaged in a pattern of prohibited conduct. 18 U.S.C. § 1964(a). For a distraught parent who finds pornographic pictures of his or her child in circulation, that provision offers the only certain way to get immediate action in court to prevent its nationwide distribution.[34]

If a criminal action were delayed in such a case, the pornographic material could be reproduced and spread so far, so fast that it would never be possible to retrieve it - leaving parents, in the words of the Ferber Court, fearing the existence of a "permanent record of the children's participation" and knowing that "the harm to the child is exacerbated by its circulation". 102 S. Ct. at 3348. Injunctive relief would not only allow suppression of that circulation but would allow as well judicial monitoring of the future activities of offenders. Victims of sexual exploitation, through such equitable relief, could then obtain protection against future reprisals because of their exposure of the offender's activities. All in all, RICO offers a shield to children used in pornography against endless circulation of the offending material and against the fear of revenge for speaking out.

C. Inadequacy of State Remedies. While to a limited extent victims of child pornography may have recourse to state courts for monetary or equitable relief, such access is in practice and even in theory virtually useless. In this context it is worth recalling why the nature of the "kiddie porn" industry made it necessary for Congress to enter the child protection field, which is normally the primary concern of the states:

> When a conspiratorial group of individuals from several states combine to molest children and even produce movies across state lines depicting their abuse, where else but in federal court should the prosecution take place? What state should try such a case? What state would want to prosecute it? What state has the money to prosecute it?[35]

The interstate character of so much traffic in child pornography in and of itself argues for federal remedies on every level, the civil as well as the criminal. Just as state civil remedies against combinations in restraint of trade were inadequate to address the problem which the federal antitrust laws now cover, so too the practical problems of obtaining civil relief in a state court against a multi-state "kiddie porn" ring argue for at least supplementary federal remedies.

Even if state courts could provide practical relief for victims of sexual exploitation, it is unclear whether they have any legally viable approach to do so. In a recent New York case, for example, the Court of Appeals held that Brooke Shields had no cause of action to suppress the circulation of nude photographs taken when she was ten years old - because her mother had signed a consent form. Shields v. Gross, 58 N.Y. 2d 338 (1983). In that case the court refused to allow Miss Shields to revoke her "consent", and left her with no recourse against publication even though the lower courts found that a "mere glance at the photographs in controversy ... plainly demonstrates [that] their widespread dissemination would damage [Miss Shields]." Shields v. Gross, 88 A.D.2d 846,849 (1982) (Asch, J., concurring). In another, similar case a federal judge in Texas dismissed a mother's suit on behalf of her children to obtain damages for publication of nude photographs of the children in Hustler magazine, holding that under state law the mother's consent to an earlier publication of the photographs barred any legal action by her children. Faloona ex rel. Frederickson v. Hustler Magazine, Inc., Docket No. CA 3-79-0056-R (N.D. Tex. 5/2/'85).

The problem of a minor's "consent" to appear in pornography is only one of many issues that could defeat a lawsuit based on such exploitation. Thus there can be no recovery for invasion of privacy "for giving further publicity to what the plaintiff himself leaves open to the public eye".[36] An actor can be considered a "voluntary public figure", while the victim of a crime (e.g., sexual exploitation) may be an "involuntary public figure" - neither having a recourse to an action for damages for exposure of activities in those capacities.[37] Mere distribution of "kiddie porn" already in circulation, particularly where the identity of the child actors is unknown, may not constitute "outrageous conduct" sufficient to support an action for intentional infliction of emotional distress.[38] The fact that the child pornography, by virtue of its photographic character, cannot be "false" likewise would seem to make recovery for libel all but impossible [39] - even though, of course, the reputation of the child actor could suffer harm from such material far worse than from any defamation.

As an injunctive relief, state courts would be seriously limited in their ability to assist a victim of sexual exploitation simply by reason of their limited jurisdiction. The ease with which child pornography may be transported would force such victims to obtain separate injunctions in virtually every state - an impossible burden. As the Brooke Shields case illustrates, moreover, any number of states might refuse injunctive relief altogether.

We are unaware, in fact, of any successful civil suit by a child victim of sexual exploitation in state court. The absence of treble damages or attorney's-fees awards in such cases no doubt is a strong reason for their apparent dearth. While it will always be excruciating for children in pornography to reveal their injuries in a public forum, the availability of RICO civil remedies might be sufficient incentive. Certainly those children deserve at least a fair chance to receive retribution.

V. BURDENS IMPOSED ON THE DEPARTMENT OF JUSTICE

Surely any scheme for revision of federal criminal statutes must take careful account of the effects such changes may have on the orderly administration of the Department of Justice. Some "reforms", while wholly laudable in concept, may have the practical effect of overburdening the Department with work of relatively low priority, or of confusing the reach of other existing laws for which the Department has enforcement responsibility. Fortunately, the addition of child pornography offenses to RICO would have no such real-world drawbacks.

Attacking child pornography, to begin with, is a matter of "high priority" for the Department, as it has consistently made clear.[40] Thus the Department has joined the federal Interagency Group to Combat Child Pornography and intends to "move far more aggressively" against child pornographers than in the past.[41] Further, the Department has long recognized the usefulness of RICO in areas of high prosecutorial priority. Thus one of its manuals on RICO explains:

> The RICO statute has allowed us to add a significant weapon against white collar and organized criminals - the attack on the organization, the enterprise, or the pattern of criminal activity which is at the core of the effort of the individuals to acquire power and profit.
> ... The criminal and civil tools provided by [RICO] give impetus to imaginative prosecutions and the development of quality cases.[42]

That same manual details how the use of RICO allowed the successful break-up of a local police department's corrupt tolerance of prostitution and other vice-related crimes.[43] See, United States v. Brown, 555 F.2d 407 (5th Cir. 1977).

As for potential confusion with existing criminal statutes, addition of the child-pornography provisions to RICO would have precisely the opposite effect. With child prostitution and adult obscenity now both within RICO's ambit, it is extremely anomalous, indeed almost inexplicable, that child pornography is outside it. When child prostitution, adult pornography and child pornography are often hopelessly intertwined in the facts of specific cases it would seem to be a matter of great delicacy, or downright confusion, for the "kiddie porn" elements to be kept separate for RICO purposes. The Department's unenviable task of attacking the worst excesses of the sex industry would seem to gain considerably in clarity, at least, through treatment of child pornography in RICO consistent with other, related offenses.

VI. OTHER PROVISIONS of S. 985

For reasons generally discussed above, I will only comment on the balance of S. 985 by stating my strong support for its provisions imposing a mandatory minimum sentence for violations of 18 U.S.C. § 2251 (prohibiting production of child pornography), mandating a report from the Attorney

General regarding investigative and courtroom procedures sensitive to children's needs, and modifying the statistical crime reporting systems of the F.B.I. to allow identification of the number of crimes involving sexual exploitation of children. I also support the concept, included in Section 6(b) of S. 985, of mandatory minimum sentences for convictions under 18 U.S.C. § 2252 (prohibiting distribution of child pornography) but believe that the minimum incarceration for these offenses should be somewhat shorter than for those which involve actual *production* of child pornography. Some of those convicted under Section 2252 will be one-time, non-commercial and relatively innocuous distributors; it may seem unjust in those cases to impose minimum terms as harsh as for those who actually abuse children sexually to *manufacture* child pornography.

VII. CONCLUSION

Overall it seems clear to me that the changes proposed by S. 985 in federal criminal statutes will be strongly beneficial both to law enforcement officials and to children whose lives have been crushed by sexual exploitation. I congratulate the Subcommittee for its continued, distinguished leadership in protecting children vulnerable to such exploitation, and offer you our full support in your future work.

Notes

1. *Child Pornography and Pedophilia: Hearing before the Permanent Subcommittee on Investigations of the Commission on Government Affairs, U.S. Senate, 99th Cong., 1st Sess.* 103-104 (2/12/85)(Dept. of Justice statistics)(hereinafter "Investigations Subcommittee Hearing II").

2. *Id*. at 105.

3. While a few courts have, in the context of civil RICO actions, attempted to limit RICO to classic operations of traditional "organized crime", *see*, *e.g.*, *Barr v. WUI/TAS Inc.*, 66 F.R.D. 109 (S.D.N.Y. 1975) every court considering the statute in a criminal case and the clear majority of courts construing its civil provisions, have concurred with the conclusion of *Barber*. *See*, *United States v. Martino*, 640 F.2d 367,380 (5th Cir. 1981)(criminal), *United States v. Aleman*, 609 F.2d 298,303 (7th Cir. 1979)(criminal); *United States v. Forsythe*, 569 F.2d 1127,1136 (3rd Cir. 1977) (criminal); *Heinold Commodities, Inc. v. McCarty*, 513 F. Supp. 31;. 313 (N.D. Ill. 1979)(civil); *Engl v. Berg*, 511 F. Supp. 1146,1155 (E.D. Pa. 1981). Indeed, the Supreme Court this month dismissed as "discredited" the "requirement of an organized crime nexus", *Sedina, S.P.L.R. v. Imrex*

Company, Inc., et al., ____ U.S. ____, 53 U.S. Law Week 5034, 5036 n.6 (Docket No. 84-648, 7/1/85), citing Harow v. American Nat'l. Bank & Trust Co. of Chicago, 747 F.2d 386, 394 (7th Cir. 1984), aff'd, 53 U.S. Law Week 5067 (1985). Commentators, too, have been unanimous in finding RICO is in no sense confined in its criminal or civil provisions to fighting "organized " or "syndicated" crime in a genuine sense, but is a "functional [statute] aimed at certain proscribed conduct carried out in a specific fashion". Strafer, et al., Civil RICO in the Public Interest: "Everybody's Darling", 19 Am. Crim. L. Rev. 655,671 (1982), and citations therein at 672 n.129.

4. Engl v. Berg, 511 F. Supp. 1146 (E.D. Pa. 1981)(real estate investment fund); United States v. Grzywacz, 603 F.2d 682 (7th Cir. 1979)(police bribery in connection with prostitution). Heinold Commodities, Inc. v. McCarty, 513 F. Supp. 311(N.D. Ill. 1979)(losses in commodities trading).

5. Parrish, RICO Civil Remedies: An Untapped Resource For Insurers, 49 Ins. Counsel J. 337 (1982).

6. Section 6 of the Child Protection Act of 1984, of course, incorporated both criminal and civil forfeiture provisions within the enforcement structure of the federal child-pornography acts. See, 18 U.S.C. §§ 2253, 2254. In view of those new provisions it is not likely that the forfeiture provisions of RICO will often need to be used against a child pornography enterprise; nevertheless, those provisions may be extremely valuable in certain, particularly complex cases. Just as RICO allows prosecution of members of an enterprise only indirectly involved in commission of actual criminal offenses - i.e., those who conspired to create a racketeering "enterprise", 18 U.S.C. § 1962(d) - so RICO's forfeiture provision, if made applicable against child pornographers, would allow prosecutors to seek such relief against those who knowingly participated in a "kiddie porn" business (e.g., as financiers) without actually producing or distributing the material. See, Russello v. U.S., ____U.S.____, 78 L.Ed.2d 17 (1983). The RICO forfeiture provisions also by their terms allow forfeiture to be sought against any "interest" in an enterprise use to commit the covered offenses, 18 U.S.C. 1963(a); this description is broader than that of the forfeiture provisions contained in the Act, which apply only to property used in committing criminal sexual exploitation, the visual material produced, and the profits from such activity. 18 U.S.C. §§ 2253(a), 2254(a).

7. Section 1964(c) as currently worded provides for damages sustained only with regard to "business or property". While a child's reputation is clearly a "property" interest in part, the injuries suffered by victims of sexual exploitation are overwhelmingly personal in nature. S. 985 quite properly recognizes this fact and, in Section 4, includes a minor revision of 18 U.S.C. § 1964(c) to bring damages for personal injury within the relief which children victimized in child pornography may seek. The proposed amendment to Section 1964(c) is narrowly drawn to encompass only sexual exploitation within the area for which personal injury damages are allowed; thus it wreaks no change in RICO's application to other activities. In this respect the bill might, to be sure, profitably be expanded to allow recovery for personal injuries suffered by victims of exploitation in child prostitution as well - activity covered by 18 U.S.C. §§ 2421-24, and currently included among the predicate offenses listed in RICO, 18 U.S.C. § 1961(a)(1). Child prostitution inflicts injuries substantially similar to the damage caused by involvement in child pornography; indeed, the two activities are substantially connected. See, D. Weisberg, Children of the Night, 68-69 (1985)(27 percent of adolescent male prostitutes photographed in course of activity); A. Burgess, et al., Child Pornography and Sex Rings, 78 (1984) (76.5 percent of children in "syndicated" pornography rings also used in prostitution).

8. *See, e.g.*, Statement of Charles P. Nelson, Ass't. Chief Postal Inspector, before the Subcommittee on Crime (June 16, 1983) 5; *Sexual Exploitation of Children, A Report to the Illinois General Assembly* (1980)("*Illinois Report*"), 284.

9. *Illinois Report*, *supra*, n.8, 283-84; Statement of Dana E. Caro, F.B.I., before the U. S. Senate Subcommittee on Juvenile Justice (April 1, 1982) 4.

10. Statement of Dana E. Caro, supra, n.9 at 4.

11. Statement of Dana E. Caro, supra, n.9 at 1.

12. O'Brien, *Child Pornography*, (1983), 123-126.

13. *Sexual Exploitation of Children*, Hearings before the House Subcomm. on Crime of the Comm. on the Judiciary, 95th Cong., 1st Sess. (1977) ("1977 *House Hearings*"), 96 (Statement of Robert Leonard, Pres., Nat'l Assn. of District Attorneys).

14. *See*, O'Brien, *Child Pornography* (1983), 114-118; Statement of Charles P. Nelson, *supra* n.8 at 5.

15. A. Burgess, *et al.*, *Child Pornography and Sex Rings* 51, 74 (1984).

16. "Porn Probe Led to L.A. Link," Vancouver *Province*, 4/3/83.

17. "Officials Say Florida Inmate Ran Child Porn Ring," St. Petersburg *Times*, 7/22/83, pg. 1.

18. Statement of Dana E. Caro, *supra* n. 9 at 1. Charles P. Nelson reported that, while the Postal Service has not found child pornography to be highly profitable "when conducted through the mails," he agreed that it is "potentially lucrative". Statement, *supra* n. 8 at 4.

19. O'Brien, *Child Pornography* (1983), 7-8.

20. Conversation of June 12, 1981, quoted in trial transcript, *People v. Hyman* (N.Y. Co. Sup. Ct. 1983), made available for review by the office of the New York County District Attorney.

21. "The Mother of Kiddie Porn," *Newsweek*, 1/23/84.

22. *Child Pornography and Pedophilia*, *Hrg. before the Permanent Subcom on Investigations of the Comm. on Governmental Affairs*, U.S. Senate, 98th Cong., 2d Sess. 41-42 (11/30/84) (statement of Charles P. Nelson, Asst. Chief Postal Inspector).

23. S. Rep. No. 95-438, p.5 (1978).

24. Statement of Charles P. Nelson, *supra* n. 8 at 4-5.

25. *See*, Guio, *et al.*, *Child Victimization: Pornography and Prostitution*, *3 J. Crime and Justice* 65 (1980) Burgess, *et al.*, *Child Sex Initiation Rings*, 51 Am. J. Orthopsychiatry 110 (1973).

26. *1977 House Hearings*, *supra* n. 13 at 75 (statement of Robert F. Leonard); O'Brien, *Child Pornography* (1983) ("the perpetrator usually holds a place of authority," *id*. at 13).

27. *See*, *e.g.*, *United States v. Stratton*, 649 F.2d 1066 (5th Cir. 1981)("enterprise" can refer to a state judicial district). RICO, of course, specifically applies to those who act "indirectly" in a prohibited enterprise. 18 U.S.C. §1962(c).

28. Strafer, *et al.*, *Civil RICO in the Public Interest: "Everybody's Darling"*, 19 Am. Crim. L. Rev. 656,682 (1982), *and citations therein*.

29. 84 Stat. 922-923.

30. United States v. Turkette, 452 U.S. 576, 591-593 (1981).

31. Child Pornography, Hearing on S.2856 before the Senate Subcommittee on Juvenile Justice of the Comm. on the Judiciary, 97th Cong., 2d Sess.(1982), 130 (statement of Dr. John Dillingham, Wash. School of Psychiatry). See, citations in New York v. Ferber, supra 102 S. Ct. at 3355 n. 9.

32. For an excellent brief discussion of the background of the RICO civil damages provision, see, Sedina, S.P.L.R. v. Imrex Company, Inc., ____ U.S. ____, 53 U.S. Law Week 5034,5036 (1985). See, also, Parrish, RICO Civil Remedies: An Untapped Resource for Insurers, 49 Ins. Counsel J. 337, 348-49 (1982).

33. Weiss & Berg, Child Victim of Sexual Assault: Impact of Court Proceedure (mimeographed), presented at the annual meeting of the American Academy of Child Psychiatry, Chicago, 1980. ("Most children resist going to trial because of the embarrassment of having to relate in front of strangers the details of the sexual assault." Id at 2.)

34. Lower courts have split sharply on the issue of whether equitable relief is available to private claimants under RICO. Compare, Chambers Development Co. Inc., v. Browning-Ferris Industries, 590 F. Supp. 1528 (W.D. Pa. 1984)(available); Marshall Field & Company v. Icahn, 537 F. Supp. 413 (S.D.N.Y. 1982)(same); and Vietnamese Fisherman's Assn v. Knights of Ku Klux Klan, 518 F. Supp. 993 (S.D. Tex. 1981)(same); with, Dan River, Inc. v. Icahn, 701 F.2d 278 (4th Cir. 1983)(not available, dicta); Trane Co. v. O'Connor Securities, 561 F. Supp. 301 (S.D.N.Y. 1983) (not available); Kaushal v. State Bank of India, 556 F. Supp. 576 (N.D. Ill. 1983)(not available). Even if restricted to prosecutors, however, actions for equitable relief would be powerful protections for child pornography victims. And because the lower standards of proof likely applicable to RICO civil actions prosecutors might well bring such suits where a criminal prosecution might fail.

35. 1977 House Hearings, supra, n. 13 at 75 (statement of Robert F. Leonard).

36. Restatement (Second) of Torts, § 652D, Comment b.

37. Id. § 652D, Comments e. & f.

38. Id. § 46, Comment d. There must, to support liability for infliction of emotional distress, exist knowledge "that such distress is certain, or substantially certain, to result from his conduct." Id. § 46, Comment i. Because so much child pornography is undated and, indeed, imported, a distributor might be held not to have a sufficiently high degree of certainty that a particular child would in fact be harmed.

39. Id. § 581A.

40. See, e.g., Investigations Subcommittee Hearings II, 99-104 (statement of Victoria Toensing, Dep'y Ass't Attorney General)

41. Id. at 100.

42. An Explanation of the Racketeer Influenced and Corrupt Organization Statute, prepared by the staff of Strike Force 18, Organized Crime and Racketeering Section, Criminal Division, Dept. of Justice, 4th Ed. (1977?), 2.

43. Id. at 21-23.

Senator GRASSLEY. I would like to call our last two witnesses, Catherine L. Anderson and Howard Davidson. Catherine Anderson is an attorney in the administrative offices in Hennepin County, Minneapolis, MN. She is a graduate of the University of Minnesota, been active in a lot of prosecutions in most Minnesota State courts, and has successfully argued several precedent setting appeals to the Minnesota Supreme Court. In 1982, she was selected as a White House fellow and has served as special assistant to Attorney General William French Smith.

Howard Davidson is also with the ABA and has been the director of the National Legal Resource Center for Child Advocacy and Protection. He has been in that position since 1979.

For the benefit of all, I would like to say that the center is a clearinghouse for technical assistance, consultation, training, and written materials related to legal aspects of child welfare problems for attorneys, judges, and those who work in the social sciences.

I would ask you to start, Ms. Anderson, and then we will go to Mr. Davidson.

STATEMENTS OF CATHERINE L. ANDERSON, CHAIRPERSON, PROSECUTION FUNCTION COMMITTEE, SECTION OF CRIMINAL JUSTICE, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY HOWARD DAVIDSON, DIRECTOR, NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION, AMERICAN BAR ASSOCIATION

Ms. ANDERSON. Thank you, Mr. Chairman. I am very happy to be here today on behalf of the American Bar Association. I chair the Prosecution Function Committee of the association's criminal justice section. I would ask that my written statement together with the appendices A and B be incorporated into the record, and I will try to abbreviate my oral presentation to save my voice and your ears, if for no other reason.

I will limit my remarks to section 7 of S. 985, the Child Abuse Victims Rights Act of 1985. My remarks are based on the ABA's "Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged." The guidelines are intended to serve as models to encourage the development of policies, procedures, rules, and legislation to accomplish needed reform.

The guidelines were developed largely through the efforts of the Prosecution Function Committee of the criminal justice section, which also worked with the Defense Function Committee and coordinated its efforts. Also instrumental in developing the guidelines was the National Legal Resource Center for Child Advocacy and Protection, where Howard Davidson is the staff director.

The center and its child sexual abuse law reform project have published a number of articles which we thought might be of assistance to the subcommittee, and they are attached at appendix B. Ultimately, the guidelines were adopted by the ABA House of Delegates in July 1985. A copy of the guidelines together with a commentary report is attached at appendix A of my statement.

The mutual goals embraced by all of the diverse adversarial interests involved in developing the guidelines was to increase awareness and sensitivity to the needs of children in our criminal justice system. Section 7 of S. 985 is certainly consistent with the goals as contemplated by the American Bar Association. In fact, many of the issues which are addressed in the ABA guidelines are identified in section 7 of S. 985; and, while we agree with the importance of the issues which you have identified in your proposed legislation, we feel that there are a number of other issues which warrant your consideration. The ABA guidelines are organized into five categories: first, a team approach; second, speedy trial; third, procedural reform; fourth, legislative initiatives; and, finally, media responsibility.

The first set of recommendations involving a team approach to investigation and prosecution of child abuse cases is consistent with the provisions set forth in section 7(b) (3), (4), and (5) of your proposed legislation. In addition, the ABA guidelines recommend vertical prosecution, wherein one prosecutor handles all aspects of the case, wherever possible.

Second, the guidelines urge courts to take appropriate action to ensure a speedy trial and to consider and give weight to any possible adverse impact delay or continuance might have on the child who is testifying. Delay and continuance are ongoing chronic problems in the criminal justice system, and they are not addressed in section 7 of S. 985. The ABA respectfully urges this subcommittee to consider including them.

Third, the ABA guidelines encourage modification of court procedures and protocol as necessary to accommodate the needs of child witnesses in criminal cases, juvenile delinquency, and child protection cases where child abuse is alleged, including: A. The evaluation of competency on a case-by-case basis without regard to mandatory or arbitrary age limitations. This is not addressed in your legislation. B. The use of leading questions both on direct and cross examination, subject to the court's discretion and control. This also is not addressed in S. 985. C. Careful court monitoring of direct and cross examination. This is similar to the provisions set forth in section 7(b)(2) of S. 985 which deals with court discretion. D. Allowing a child to testify from somewhere other than the traditional witness stand in the courtroom. This is not addressed in S. 985. E. The use of supportive persons when a child testifies. The is also not addressed. F. The use of anatomically correct dolls. G. The use of closed circuit television, one-way mirrors, or other manners of alternative testifying. This is contemplated in section 7(b)(1) of S. 985. Our provision would apply only so long as the defendant's right to confrontation is not impaired. H. Exclusion of unnecessary persons from the courtroom. This is not addressed in S. 985. I. The use of reliable hearsay at pretrial and in child protection proceedings when appropriate. This is not included in S. 985. And, finally, J. The use of videotaped depositions of a child's testimony at pretrial and in noncriminal proceedings. This is not addressed in S. 985.

Fourth, the ABA guidelines recommend the enactment of appropriate legislation, as necessary, to promote modification of court procedures and evidentiary rules. Furthermore, the ABA urges extension of statutes of limitations in cases where child abuse is alleged and the creation of State programs to deal with the special needs of child victims and witnesses in cooperation with local communities and the Federal Government. Although these recommendations are primarily addressed to State legislative bodies, there is clearly a role for the Federal Government. That role is one of leadership in providing models for State action as well as assistance in implementation of programs. In fact, the reports of the President's Task Force on Victims of Crime and the report of the Attorney General's Task Force on Domestic Violence were very important resources to our committee in developing the guidelines. There are a number of other organizations that are working in this area as well that would be able to provide input. More specific recommendations with regard to the special needs of children at the Federal level could provide an important model to States, their legislatures, the courts, and the attorneys who practice in this area.

Finally, the ABA guidelines address the issue of media responsibility. Responsible reporting can do much to educate the public on the most serious problems of child abuse. However, the news media is urged to exercise caution, good taste, and restraint so as not to exacerbate the psychological harm already suffered by a child who is a victim of child abuse or to impair the possibility of treatment or the reunification of a family where abuse has occurred.

The issue of media responsibility is not addressed in S. 985, and we seriously hope that the subcommittee will consider including it. This is clearly an area of national concern. National media coverage has captured the attention of the country and focused on child abuse cases from coast to coast. The Federal Government is in an excellent position to increase the media's awareness of the importance of responsible reporting and greater sensitivity in their coverage of these matters.

In summary, the ABA urges the adoption of appropriate legislation to encourage changes in procedure, protocol, and rules consistent with the ABA "Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged." Although Federal jurisdiction, per se, over child abuse cases is extremely limited, State and local communities cannot be expected to solve these difficult problems without some guidance and assistance. The leadership role of the Federal Government could be very important in accomplishing mutual goals of increasing sensitivity to the special needs of children within our criminal justice system. We hope that our experience and our suggestions will be helpful to you in developing responsible, practical, and fair recommendations for appropriate Federal response.

The ABA would be happy to assist you in any way that we can, and I would now be happy to answer any questions that you may wish to address to me.

[Prepared statement follows:]

PREPARED STATEMENT OF CATHERINE L. ANDERSON

Mr. Chairman and Members of the Subcommittee:

My name is Catherine Anderson. I am an Assistant County Attorney in Hennepin County, Minnesota. I appear before you today on behalf of the more than 315,000-member American Bar Association. I chair the Prosecution Function Committee of the Association's Criminal Justice Section. I want to thank you for the opportunity to speak with you on behalf of the ABA regarding Section 7 of S.985, the "Child Abuse Victim Rights Act."

Aside from presenting the Association's views on this issue to you, I am personally interested in the subject. Most of my twelve years of practice have been devoted to criminal trial work. I have handled child abuse cases as a defense attorney and as a criminal prosecutor. I have represented various parties to these actions in criminal court and in dependency, neglect and termination of parental rights cases in juvenile court. Most recently, our office prosecuted the Minnesota Children's Theatre cases and is assisting in handling the dependency and neglect actions arising from the Scott County Jordan Sex Ring criminal cases. Our office was also primarily responsible for recent changes in the Minnesota Mandatory Reporting laws curing constitutional defects in existing law.

The remarks included in this statement are based on the ABA "Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse Is Alleged." The Guidelines serve as a model to encourage the implementation of policies, procedures, rules and legislation to accomplish needed reform. They were developed largely through the efforts of the Criminal Justice Section's Prosecution Function Committee. The Committee consists of state and federal prosecutors, judges and law professors. The Guidelines were initiated in August 1984 following a presentation to the Committee by Lael Rubin, Deputy District Attorney, Los Angeles County, and Chief Prosecutor in the McMartin School case now pending in Los Angeles District Court. The Section's Defense Function Committee also cooperated in the development of the Guidelines.

The Guidelines were formulated through a process that subjected them to close scrutiny by the ABA Criminal Justice Section and other entities of the Association. The Section is an "umbrella" group representing the diverse views of some 7,500 prosecutors, defense attorneys, judges, civil practitioners and academicians. It has long been in the forefront of studying and developing policies on a number of victim and witness issues. For the past decade, most of the ABA efforts in the victim witness area originated in the Section.

Also instrumental in developing the Guidelines was the National Legal Resource Center for Child Advocacy and Protection, a program of the ABA Young Lawyers Division based here in Washington, D.C. The Center, which has done much since 1979 to develop awareness of the special needs of child victims and witnesses, provided valuable input during the development of the Guidelines.

The Center's Child Sexual Abuse Law Reform Project, led by Attorney Josephine Bulkley, has produced a number of publications on child sexual abuse legal issues which may be of assistance to the Subcommittee. These publications, developed after extensive research and on-going work by the ABA's Child Advocacy Center, consist of detailed system reform recommendations, state law and prosecutorial program analysis, and an intensive review of the practical and constitutional problems related to many of the issues addressed in the proposed legislation. Although these publications do not represent official ABA policy (since they have not been formally approved by the Association's House of Delegates or Board of Governors), they do reflect over five years of work which has involved many respected lawyers, social workers, and treatment professionals who have worked in this area. A list of the publications appears as Appendix B. In addition, Howard Davidson, Staff Director of the ABA's Child Advocacy Center, is here today, and is available to respond to any questions you may wish to address to him.

Ultimately, the Guidelines were adopted by the ABA House of Delegates in July 1985. A copy of them, along with an explanatory report, appears as Appendix A to this statement.

The mutual goals embraced by all of the diverse adversarial interests involved in developing the Guidelines was to increase the awareness and sensitivity of the criminal justice system to the special needs of children who, through no fault of their own, are subjected to the rigor and trauma of a system and process which aspires to the administration of justice to all. But, justice to children who are victims of or witnesses to child abuse requires a recognition of their special needs. It requires examination of the multi-faceted problems of children who are victims and witnesses to child abuse. It requires an appreciation of the courage which is required to confront the alleged abuser and to reveal the intimate details of the painful incidents repeatedly to complete strangers. It requires an understanding of the inadvertent, additional trauma which the criminal justice system inflicts on the already afflicted child victim. Finally, it requires an appreciation of the pain which can be inflicted on the child who is the witness to abuse.

Section 7 of S.985 is certainly consistent with the goal of securing fair treatment for child witnesses as contemplated in the ABA Guidelines. Many of the issues addressed in the ABA Guidelines are identified in Section 7, which directs the Attorney General to examine several issues and make recommendations to assure implementation of needed reforms. While the ABA agrees with the importance of those issues raised in Section 7, we believe there are a number of other issues which warrant consideration.

The ABA Guidelines include recommendations and reforms in five general categories: (1) A Team Approach; (2) Speedy Trial; (3) Procedural Reform; (4) Legislative Initiative; and (5) Media Responsibility. I will now briefly outline the recommendations in each category.

The first set of recommendations involve a team approach to the investigation and prosecution of child abuse cases. These recommendations are supportive of the proposals made in S.985 section 7(b)(3), (4) and (5). In addition, the ABA Guidelines recommend vertical prosecution, wherein the same prosecutor handles all aspects of a case, whenever possible.

Second, the Guidelines urge the courts to take appropriate action to insure a speedy trial and to consider and give weight to any adverse impact that delay or continuance might have on the well-being of a child witness when ruling on motions for continuance. Delay and continuance are ongoing problems in the criminal justice system and are not addressed in Section 7 of S.985. The ABA respectfully suggests that the Subcommittee may wish to consider including them.

Third, the ABA Guidelines encourage modification of court procedure and protocol as necessary to accommodate the needs of child witnesses in criminal cases and juvenile delinquency and child protection proceedings where child abuse is alleged, including:

A. Evaluation of competency on an individual basis, without resort to mandatory or arbitrary age limitations;

B. Use of leading questions on direct and cross-examination, subject to the court's direction and control;

C. Careful court monitoring of direct and cross-examination, similar to the judicial discretion provision of Section 7 (b)(2) of S.985;

D. Allowing a child to testify from somewhere other than the traditional witness stand;

E. Use of supportive persons when a child testifies;

F. Use of anatomically correct dolls;

G. Use of closed circuit television, one-way mirrors or other alternative manners of testifying, as reflected in Section 7 (b)(1) of S.985, so long as the defendant's right to confrontation is not impaired;

H. Exclusion of unnecessary persons from the courtroom;

I. Use of reliable hearsay at pretrial and in child protection proceedings, when appropriate; and

J. Use of video-taped depositions of a child's testimony at pretrial and in non-criminal proceedings.

Fourth, the ABA Guidelines recommend enactment of appropriate legislation as necessary to permit modification of court procedures and evidentiary rules. Furthermore, the ABA urges extension of statutes of limitations in cases involving the abuse of children and the establishment of state programs to provide special assistance to child victims and witnesses in cooperation with local communities and the federal government. Although these recommendations are primarily directed to state legislative bodies, there is clearly a place for the federal government to take a leadership role in providing models for state action, as well as assistance to states in implementation of programs. In fact, the reports of the President's Task Force on Victims of Crime and the Attorney General's Task Force on Domestic Violence were important resources for our Committee in developing the ABA Guidelines. More specific recommendations with regard to the special needs of children and changes needed to address those needs at the federal level would serve as a model to states, their legislatures, the courts and the lawyers who practice in this area.

Finally, the ABA Guidelines address the issue of media responsibility. Responsible reporting can do much to educate the public concerning the most serious problems of child abuse. However, the news media is urged to exercise caution, good taste and restraint so as not to exacerbate the psychological harm already suffered by an abused child or to impair the potential for treatment and reunification of a family where abuse has been present.

The issue of media responsibility is not addressed in S.985, and the ABA hopes that the Subcommittee will consider including it. This is clearly an area of national concern. National media coverage has captured the attention of the country and focused on cases of child abuse from coast to coast. The federal government is in an excellent position to influence the national media by further emphasizing the need for greater media sensitivity in coverage of these matters.

CONCLUSION

In summary, the ABA urges the adoption of appropriate legislation to encourage changes in procedure, protocol and rules consistent with the ABA "Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged." Section 7 of S.985 would establish a procedure for reviewing the Federal Rules of Evidence, Criminal Procedure, and Civil Procedure and other Federal courtroom, prosecutorial, and investigative procedures. This review would result in a report detailing possible changes to facilitate the use of child witnesses in child abuse cases.

Although federal jurisdiction over child abuse crimes per se is extremely limited, states and local communities cannot solve these problems without some guidance and assistance. The leadership role of the federal government could be important in accomplishing the mutual goals of improving the treatment of children within the criminal justice system. We hope that our experience and suggestions will help you in developing responsible, practical and fair recommendations for an appropriate federal response to the needs of child abuse victims and witnesses in our nation. The American Bar Association would be happy to assist you in any way it can.

I will be pleased to answer any questions.

APPENDIX A

AMERICAN BAR ASSOCIATION

GUIDELINES FOR THE FAIR TREATMENT OF CHILD WITNESSES IN CASES WHERE CHILD ABUSE IS ALLEGED

A TEAM APPROACH

1. A multidisciplinary team involving the prosecutor, police, and social services resource personnel should be utilized in the investigation and prosecution of cases where a child is alleged to be the victim of or witness to abuse in order to reduce the number of times that a child is called upon to recite the events involved in the case as well as to create a feeling of trust and confidence in the child.

a) Members of such teams should receive specialized training in the investigation and prosecution of cases where children are alleged victims and witnesses of abuse.

b) Whenever possible, the same prosecutor should handle all aspects of a case involving an alleged child victim or witness including related proceedings outside the criminal justice system.

A SPEEDY TRIAL

2. In all proceedings involving an alleged child victim, the court should take appropriate action to ensure a speedy trial in order to minimize the length of time a child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of a child.

PROCEDURAL REFORM

3. In criminal cases and juvenile delinquency and child protection proceedings where child abuse is alleged, court procedures and protocol should be modified as necessary to accommodate the needs of child witnesses including:

a) If the competency of a child is in question, the court should evaluate competency on an individual basis without resort to mandatory or arbitrary age limitations.

b) Leading questions may be utilized on direct examination of a child witness subject to the court's direction and control.

c) To avoid intimidation or confusion of a child witness, examination and cross-examination should be carefully monitored by the presiding judge.

d) When necessary, the child should be permitted to testify from a location other than that normally reserved for witnesses who testify in the particular courtroom.

e) A person supportive of the child witness should be permitted to be present and accessible to the child at all times during his or her testimony, but without influencing the child's testimony.

f) The child should be permitted to use anatomically correct dolls and drawings during his or her testimony.

g) When necessary, the child should be permitted to testify via closed-circuit television or through a one-way mirror or any other manner, so long as the defendant's right to confrontation is not impaired.

h) Persons not necessary to the proceedings should be excluded from the courtroom at the request of a child witness or his or her representative during pretrial hearings in cases where the child is alleged to be the victim of physical, emotional, or sexual abuse.

i) At pretrial hearings and in child protection proceedings the court, in its discretion, if necessary to avoid the repeated appearance of a child witness, may allow the use of reliable hearsay.

j) When necessary the court should permit the child's testimony at a pretrial or noncriminal hearing to be given by means of a videotaped deposition.

LEGISLATIVE INITIATIVE

4. State legislatures should, where necessary, enact appropriate legislation to permit modification of court procedures and evidentiary rules as suggested herein and in addition should:

a) extend the statute of limitations in cases involving the abuse of children;

b) establish programs to provide special assistance to child victims and witnesses or enhance existing programs to improve the handling of child abuse cases and minimize the trauma suffered by child victims, in cooperation with local communities and the federal government.

MEDIA RESPONSIBILITY

5. The public has a right to know and the news media has a right to report about crimes where children are victims and witnesses; however, the media should use restraint and prudent judgement in reporting such cases and should not reveal the identity of a child victim.

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(The above guidelines were approved by the American Bar Association's House of Delegates at its meeting in Washington, D.C. on July 10th, 1985. These black-letter guidelines constitute official ABA policy. The following report accompanying the guidelines contains background information and commentary but does not carry the policy imprimatur of the Association.)

REPORT

FOREWARD

The following guidelines result from a collective effort by the American Bar Association's Prosecution and Defense Function Committees to address the special problems and needs of children who with increasing frequency are appearing in the nation's courts as victims and witnesses.

The Prosecution Function Committee under then chairperson Alexander R. Williams III began work on the project in Chicago in August 1984. Input was provided from members of the Prosecution Function, Defense Function, and Victims Committees of the Criminal Justice Section as well as by Howard A. Davidson and Atty. Josephine A. Bulkley of the National Legal Resource Center for Child Advocacy and Protection sponsored by the Young Lawyers Division and Assistant Attorney General Lois Haight Herrington. The proposed guidelines were reviewed by Prosecution Function and Defense Function Committees at a joint meeting in Aspen, Colorado in April 1985 and, following certain revisions, both committees agreed to recommend that the Criminal Justice Section Council endorse them. At its May 1985 meeting in San Francisco, California the Criminal Justice Section Council considered the proposed guidelines and unanimously recommended their adoption.

The proposal was endorsed by the National District Attorneys Association and likewise received favorable attention by several ABA committees and sections. The House of Delegates adopted the guidelines as formal ABA policy on July 10th, 1985 at its meeting in Washington, D.C.

Editing and research was done by Dick Ginkowski, former District Attorney of Rusk County, Wisconsin, who had primary responsibility for compiling data and drafting the guidelines. Special recognition is due to the ABA Young Lawyers Division's National Legal Resource Center for Child Advocacy and Protection and in particular to its Child Sexual Abuse Law Reform project headed by Josephine A. Bulkley. Their ongoing efforts to promote effective child advocacy in our legal system is to be commended. Readers interested in obtaining detailed information about the many special problems and needs of children in our legal system will find the center's numerous publications of assistance. A list and order form is appended. Space unfortunately does not allow enumeration of the numerous ABA members and staff whose dedicated cooperation and support contributed to the success of this endeavor. Every contribution, no matter how small, was deeply appreciated. Special recognition, however, is due to Judge Sylvia Bacon of the District of Columbia Superior Court who presented the proposed guidelines to the House of Delegates on behalf of the Criminal Justice Section as well as to CJS staff members Marcia Christensen and Carol Rose in sincere appreciation for the many hours they spent on this project. Also a special note of thanks is due to ABA President John C. Shepherd for his kind support of this endeavor to address some of the most troublesome problems and needs of children who find themselves as unwilling and yet necessary participants in our legal system.

CATHERINE L. ANDERSON, chairperson
Prosecution Function Committee

INTRODUCTION

> "No sensitive person can read about child abuse without feeling anguish for the abused child or without understanding a child's needs and wishes to avoid confronting and accusing the alleged abuser in criminal proceedings, especially if the alleged abuser is a close relative of the child...The legal system must be examined to determine the traumatic effects the system may have on children who take the witness stand...It becomes tragically ironic when the legal system, acting as the child protector of last resort, becomes a perpetrator of child abuse." -- Justice Shirley Abrahamson, Wisconsin Supreme Court

> "Working to assure that our children receive the rights and protection they deserve is one of the most important ways our profession can support the cause of justice and the future of America...The need is urgent. The mission is one of our most important." -- John C. Shepherd, President, American Bar Association

A United States Senator stunned the nation by revealing that she was sexually abused at the age of five by a neighbor. A California day care center was closed after several staff members were charged with molesting preschool children and suspected of renting them out to pedophiles and pornographers. Probation was ordered for the founder of a well-known children's theatre group in Minneapolis convicted of seducing some of his boy students. A Wisconsin psychiatrist, convicted of sexually abusing some of his young patients, was sentenced to five years in prison followed by ten years probation.

For many victims and those close to them, the courts have become the final terrain where cases involving the physical, emotional, and sexual abuse of children struggle for resolution. In this arena the child victims become child witnesses -- innocent participants in an adult criminal justice system that is frequently alien and discomforting. As the number of abuse cases coming to our attention has increased, so too has the concern that the experience of the child victim or witness in the criminal justice system exacerbates existing problems of abused children by creating additional stresses.[1]

There is considerable debate over whether there are more incidences of child abuse in recent years or simply more cases coming to our attention. There is no question that child abuse and more particularly, the sexual abuse of children, is a matter of pressing national concern. Just as society is stymied to find an all-inclusive list of causes for the problem, it is also at a loss to understand its dimensions due to a lack of uniformly reliable reporting. In California, the number of known offenses almost quadrupled from 2,281 in 1977 to 8,804 in 1981.[2] In Dane County, Wisconsin, 94 incest cases were reported in 1982, a nearly 600 per cent increase from the 14 reports received in 1980.[3] Estimates of the incidences of child maltreatment each year range from 500,000 to 4.5 million, but they are largely unproven.[4] The National Center on Child Abuse and Neglect estimates that approximately one million children are maltreated each year and more than 2,000 die annually in circumstances which suggest abuse or neglect.[5] In two major recent retrospective surveys of adults, one study found 25% and the other 38% of the females surveyed had been sexually abused as children.[6] Other studies suggest that a child is molested every two minutes in the United States; the majority of the victims are between the ages of eight and 13.[7] The American Humane Association estimates that 60,000 child abuse reports were filed in 1983 -- more than double the number in 1977.[8] Regardless of the variations in statistical estimates, there is a consensus that the number of child abuse cases, particularly sexual abuse incidents, are grossly underestimated.[9]

With increasing frequency and growing alarm the child victim comes to the attention of our justice system as the child witness in prosecutions against alleged abusers and also in related proceedings such as child welfare adjudications and probation or parole revocation hearings. In some cases children are required to testify in child abuse matters in which they were not the victim.[10] Moreover, children often testify in civil cases such as divorce actions or child custody proceedings where child abuse is alleged.

Our legal system has appropriately recognized as a high priority the best interests of children accused of running afoul of the law, yet comparable consideration frequently has not been extended to child victims and witnesses. Consequently the child victim or witness becomes entangled in a legal system which has been designed for adults and is often unfamiliar with and hostile to the his or her special needs. *ABA Juvenile Justice Standards* adopted in 1979-80 and state laws focus on such due process issues as open hearings, right to counsel, and jury trials -- but these standards apply almost exclusively to juveniles alleged to have violated criminal laws.

The American Bar Association has a long history of concern with the special needs of children in the justice system. Beyond the Juvenile Justice Standards, the creation in 1978 of the ABA National Legal Resource Center for Child Advocacy and Protection, a program sponsored by the Young Lawyers Division, is perhaps one of the Association's most significant efforts to address this most pressing national problem. The Resource Center and its current Child Sexual Abuse Law Reform Project have produced a number of publications on child sexual abuse legal issues.[11] The project also provides technical assistance to target sites implementing legal reforms in child sexual abuse cases. The ABA likewise has been a long-time leader in the growing national effort to secure fair and responsible treatment for vic-tims and witnesses. The "Guidelines for Fair Treatment of Crime Victims and Witnesses In The Criminal Justice System" developed by the Criminal Justice Section were adopted by the ABA House of Delegates in August 1983. Most of those thirteen guidelines seek improved information and notification to victims and witnesses. A Criminal Justice Section sponsored "Model Statute on Intimidation of Witnesses and Victims" adopted by the ABA in 1980 provides for discretionary use by courts of special orders to protect victims and witnesses and reduce intimidation or potential efforts to dissuade them from cooperating in a prosecution.

Many of the standards developed and adopted by the ABA over the years are generally supportive of the guidelines herein, however none directly spoke to the special needs of the child victim and witness.

The ABA Standards for Criminal Justice admonish judges and attorneys that examination and cross-examination of witnesses should be conducted "with due regard for the dignity and legitimate privacy of the witness and without seeking to intimidate or humiliate them."[12] Yet another standard advises the trial judge to establish appropriate physical surroundings for each case, and to conduct the proceedings in clair and easily understandable language using interpreters when necessary.[13]

Standards Relating to Trial Courts, developed by the ABA Commission on Standards of Judicial Administration and approved by the House of Delegates in 1976, also suggest that modifications in the ordinary rules of criminal and civil procedure may be necessary to ensure a just and effective resolution in certain types of proceedings such as those involving family relationships or the welfare of juveniles.14

Beyond these general standards, the rapid rise in the number of children called upon to testify in our courts called attention to the fact that the child victim and witness has special needs and concerns in addition to those common to all victims and witnesses which in many instances were being overlooked by our legal system.

This year President Shepherd pledged "to put the needs of the children of America, which have long been overlooked, high on the agenda of the American Bar Association."15 It is in this spirit that these guidelines are offered as an extension to the "Guidelines for Fair Treatment of Crime Victims and Witnesses In The Criminal Justice System"in order to focus on the special problems and needs of children involved in judicial proceedings where child abuse is alleged.

These guidelines are the result of collective efforts by the ABA Criminal Justice Section's Prosecution Function and Defense Function Committees with extensive input from members of the Section's professionally diverse governing Council comprised of professors, defense lawyers, prosecutors, judges and others. Input was also received from members of the section's Victims Committee and Juvenile Justice Committee, the National Legal Resource Center for Child Advocacy and Protection, and several other ABA committees.

Meaningful implementation of these guidelines requires a cooperative effort by attorneys, judges, legislators and others who are concerned about the problems of the child victim and witness. For the most part these guidelines represent the distillation of efforts by local, state, and federal officials to recognize this situation and to provide effective remedies seeking both to protect the child without jeopardizing the rights of the accused.

It is recognized that not every recommendation herein is appropriate for every case in which there is a child victim or witness. These guidelines are intended to be a blueprint which will be of assistance to attorneys, judges, legislators and others who need to address the special problems and needs encountered by the child victim and witness. It is our sincere hope that they will be instrumental in promoting needed reform.

PROSECUTION FUNCTION COMMITTEE
DEFENSE FUNCTION COMMITTEE

AMERICAN BAR ASSOCIATION

APPROVED DRAFT:

GUIDELINES FOR THE FAIR TREATMENT OF CHILD WITNESSES IN CASES WHERE CHILD ABUSE IS ALLEGED

A TEAM APPROACH

1. A multidisciplinary team involving the prosecutor, police, and social services resource personnel should be utilized in the investigation and prosecution of cases where a child is alleged to be the victim of or witness to abuse in order to reduce the number of times that a child is called upon to recite the events involved in the case as well as to create a feeling of trust and confidence in the child.

a) Members of such teams should receive specialized training in the investigation and prosecution of cases where children are alleged victims and witnesses of abuse.

b) Whenever possible, the same prosecutor should handle all aspects of a case involving an alleged child victim or witness including related proceedings outside the criminal justice system.

COMMENTARY

The most common reason why a child becomes involved as a witness in our system of justice is when he or she has been the victim of abuse often perpetrated by an adult or adults that the child knows and trusts, often a family member. In other cases, children often witness crimes others commit, including the abuse of other family members such as a parent or sibling. They may also testify at noncriminal proceedings relating to alleged abuse.

These cases usually begin when information concerning the alleged abuse is received by a neighbor, teacher or other school official, social worker or law enforcement officer. Although the procedures vary by jurisdiction, the initial report and interview is usually the child's first taste of dealing with the adult system of justice. After relating the incident for the first time, the child may again be questioned by the police and then by the prosecutor prior to appearing in court. The child is expected to give to a series of strange adults accurate information on dates, times, sequences, and a description of a suspect and location. A parent or supportive person often is not present during these interviews. The child may be required to identify the offender by a picture or line-up and later testify at a preliminary hearing in court during which the child, under examination by the prosecutor and cross-examination by defense counsel, is expected again to recount the details of the abuse. If the suspect does not plead guilty, there will be a trial, perhaps several months into the future, at which the child will again be required to testify and be subject to cross-examination in an open courtroom face-to-face with the accused. It is little wonder that many concerned parents and mental health professionals worry that the effects of the legal process will be more emotionally traumatic to the child than the initial abuse itself.[16]

Many jurisdictions wisely utilize multi-disciplinary teams involving social workers, police officers, prosecutors, hospital staff, mental health professionals, victim's advocates, and sometimes a guardian ad litem.[17] Virginia, for example, encourages the development of these teams.[18] Colorado, on the other hand, directs counties in which 50 or more abuse incidents are reported in one year to establish a child protection team the following year.[19]

The multidisciplinary team approach has many advantages. First, the child hopefully will not have to repeat the details of the alleged abuse first to the teacher, for example, and then to a social worker, police officer, prosecutor, and judge in that order. Moreover, the team approach allows communities to designate and train personnel who have a demonstrated interest and ability to work with child victims and witnesses. Community resources can be identified, enhanced, and centralized in order to be of service to the child and his or her family where appropriate. Specialized training in these areas can and should be provided to those involved with child victims and witnesses. The Attorney General's Task Force on Family Violence observed that many states provide inservice training for law enforcement officers and prosecutors and suggested that such training should also be provided to judges and broadened to include techniques for dealing with the child victim and witness.[20] Such a program for judges exists in Wisconsin. [21] California requires law enforcement officers and medical personnel to be tested for basic understanding in the area of child abuse, including sexual abuse, before they may be licensed or certified.[22]

In many jurisdictions more than one prosecutor may handle a case involving a child victim or witness. This may be the result of policies and practices within a particular prosecutor's office in which the same attorney initiating the prosecution may not see it through to the preliminary hearing and trial. Concurrent proceedings such as a child welfare hearing to determine whether the child should be removed from a home where the abuse is alleged to have occurred may be handled by another prosecutor's office as these are civil and not criminal proceedings. If the accused offender is a probationer or on parole, a separate hearing may be held to determine if his or her parole or probation should be revoked. These hearings are often duplicative of the criminal case and testifying at them may subject the child to additional trauma and confusion.

Where possible, the same prosecutor should be assigned to a case involving a child victim or witness from its inception to resolution. Jurisdictions could, for example, cross-designate the criminal prosecutor as a special prosecutor to handle related proceedings involving the child. Judges may do much to help ease the trauma of a child victim as well as to eliminate unnecessary duplication and waste of judicial resources by combining, for example, the criminal preliminary hearing and the civil child welfare hearing by making separate findings after hearing relevant evidence.

This guideline is not meant to conflict in any way with Standard 2.3(b) of the ABA Juvenile Justice Standards Relating to Counsel for Private Parties which requires in juvenile and family courts that counsel be appointed in a child protection proceeding for a youth who is the alleged victim of child abuse. When a youth has such counsel, commonly known as the guardian ad litem, that attorney should be active participant in the multidisciplinary team called for in this guideline.

A SPEEDY TRIAL

2. In all proceedings involving an alleged child victim, the court should take appropriate action to ensure a speedy trial in order to minimize the length of time a child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of a child.

COMMENTARY

Besides being confusing and discomforting for the child victim or witness, the legal system is frequently painfully slow to resolve cases where children are involved. During this time, the child may be subjected to further anxiety caused by the delay in the proceedings to the extent that he or she suffers further. It may be more difficult to provide meaningful treatment to both the child and the offender during this period of uncertainty. Moreover, the child's recollection of events may diminish with time.

Recognizing this problem, the Child Victim-Witness Bill of Rights enacted by the Wisconsin legislature requires judges and prosecutors to take appropriate action to resolve all cases where a child victim or witness is involved without unreasonable delay "to minimize the length of time that the child must endure the stress of his or her involvement in the proceeding."[23] This law further requires judges to consider and give weight to any adverse impact a requested delay or continuance may have on the well-being of a child victim or witness.[24] Wisconsin allows prosecutors the same opportunity as defense counsel to demand a speedy trial.[25] In a felony case, the trial must commence within 90 days after the demand is made.[26]

The Attorney General's Task Force on Family Violence observed that expedited proceedings where a child is involved as a victim or witness produces other benefits:

> Judges are the ultimate legal authority in the criminal justice system. If they fail to handle family violence cases with the appropriate judicial concern, the crime is trivialized and the victim receives no real protection or justice. Using the yardstick of the

> court to measure conduct, the attacker will perceive the crime as an insignificant offense. Consequently, he has no incentive to modify his behavior and continues to abuse with impunity. The investment in law enforcement services, shelter support, and other victim assistance is wasted if the judiciary is not firm and supportive.[27]

The Task Force further recommended that judges should develop guidelines for the expedited processing of these cases and further suggested establishment of separate dockets so that these cases do not compete with other criminal cases for the court's attention.[28] These recommendations warrant serious consideration by judges, prosecutors, and legislators.

PROCEDURAL REFORM

3. In criminal cases and juvenile delinquency and child protection proceedings where child abuse is alleged, court procedures and protocol should be modified as necessary to accommodate the needs of child witnesses including:

a) If the competency of a child is in question, the court should evaluate competency on an individual basis without resort to mandatory or arbitrary age limitations.

b) Leading questions may be utilized on direct examination of a child witness subject to the court's direction and control.

c) To avoid intimidation or confusion of a child witness, examination and cross-examination should be carefully monitored by the presiding judge.

d) When necessary, the child should be permitted to testify from a location other than that normally reserved for witnesses who testify in the particular courtroom.

e) A person supportive of the child witness should be permitted to be present and accessible to the child at all times during his or her testimony, but without influencing the child's testimony.

f) The child should be permitted to use anatomically correct dolls and drawings during his or her testimony.

g) When necessary, the child should be permitted to testify via closed-circuit television or through a one-way mirror or any other manner, so long as the defendant's right to confrontation is not impaired.

h) Persons not necessary to the proceedings should be excluded from the courtroom at the request of a child witness or his or her representative during pretrial hearings in cases where the child is alleged to be the victim of physical, emotional, or sexual abuse.

i) At pretrial hearings and in child protection proceedings the court, in its discretion, if necessary to avoid the repeated appearance of a child witness, may allow the use of reliable hearsay.

j) When necessary the court should permit the child's testimony at a pretrial or noncriminal hearing to be given by means of a videotaped deposition.

COMMENTARY

The quest for justice and protection for abused children often pits the prosecutor in an unsettling conflict. The prosecutor, on the one hand, faces the dilemma of letting the defendant go free or doing emotional harm to the child victim or witness by compelling his or her testimony. If the prosecutor decides not to call the child as a witness, he or she may protect the child's emotional interest in not being forced to face the alleged abuser and accuse him or her of criminal acts. However, as the Wisconsin Supreme Court observed, this decision "may inflict a greater harm upon the child by allowing the alleged abuser to go free and by demonstrating to the child that the state...does not place a high enough value on the child's suffering to bring to justice the person alleged to have caused the suffering."[29]

There is little disagreement that being required to appear as a witness in court may be traumatic to a child, particularly when that child must face his or her abuser who more often than not may be a family member. After recounting the sordid details of the crime he or she witnessed and, more likely, experienced to police investigators and social workers, the child is called upon to again recite the details in a courtroom full of strangers.

Not all court appearances need to be traumatic or terribly stressful. Court appearances can be quite therapeutic when they give the victim the feeling of being a real person with rights to be defended by others.[30] Whether the courtroom experience is traumatic or therapeutic depends in large measure on the attitude of the court itself toward modifying the proceedings as necessary to accommodate the needs of child victims and witnesses. It is a challenge which many judges across the nation, stifled in many cases by archaic codes of evidence and procedure, are nonetheless striving to meet.[31]

A problem in many jurisdictions is whether a child can be presumed competent to testify. At common law the competency of a child witness is presumed where the child is over the age of 14; a witness under the age of 14 is subjected to judicial inquiry as to his or her mental capacity.[32] In at least 20 states children under a certain age are no longer subjected to the requirement established in 18th century England that they be tested as to their knowledge of truth and falsehood before they may testify.[33] In Wisconsin, where evidentiary rules generally track the Federal Rules of Evidence, children are presumed just as competent as any other witness and juries are so instructed.[34] Wisconsin also permits a judge to dispense with administering the formal oath to a child witness if the court is satisfied that the child solemnly promised to tell the truth.[35]

The results of recent social science studies indicate that the presumption of infant incompetency has historically been exaggerated.[36] The authors of one study, for example, concluded that while children may not remember verbal materials as effectively as adults, their recollection of "real life" events is astonishingly accurate.[37] Another researcher concluded there is little correlation between age and honesty.[38] Other research indicates that the reporting of sexual abuse by adults as well as children -- historically thought to be an area of much misrepresentation -- approximates the reliability for other crimes.[39] While it cannot be denied that children, just as adults, may fabricate the truth, a number of courts are giving increased credibility to the details of abuse related by child victims and witnesses. The Illinois Court of Appeals, for example, observed that child abuse cases "demand an ever greater respect for the reliability of the child's statements" noting that "it is unlikely that a child of tender years will have any reason to fabricate stories of attacks."[40]

Even if a child is presumed competent to testify, he or she may be uncomfortable in the courtroom, lack sufficient verbal skills to answer in complete sentences or appropriate narratives, or may have suppressed through anxiety the ability to recall all of the details that he or she is called upon to recite in front of a courtroom full of strangers. The use of leading questions is frequently necessary upon direct examination in order to develop the child's testimony.

The fear has often been that leading questions may lead to unreliable testimony. One study, however, suggested that children are no more influenced by leading questions than adults.[41] The courts in many states have been liberal in permitting the discrete use of leading questions during the direct examination of child witnesses. In 1911, for example, the Wisconsin Supreme Court held that leading questions in cases involving the sexual abuse of a child "are almost always necessary to get at the facts."[42] There is no evidence to suggest that such is not the case today.

Perhaps one of the greatest ordeals faced by the child victim or witness is examination and cross-examination.[43] When cross-examination occurs, it is frequently unsympathetic despite the tender age of the witness since defense counsel generally seeks to attack the credibility of the victim or witness while the prosecutor may be unwilling to vigorously object for fear of appearing overly protective of the witness and judges may decline to intervene in fear of swaying the jury.[44] Underlying these concerns are fears that children may be intimidated or confused into withholding or fabricating information, giving incorrect answers, or, at worst, being made to appear untruthful.[45]

While the rights to confront and cross-examine accusers are constitutionally instilled, this does not mean that judges lack authority to control examination and cross-examination to prevent intimidation of a witness. Traditionally, a trial judge has had discretion to do whatever is necessary to relieve a witness from fear or nervousness[46] and "to preclude repetitive and unduly harassing interrogation."[47] It is well-settled that the latitude to be allowed during examination and cross-examination is within the trial court's sound discretion.[48]

Even under the best of circumstances, the courtroom may be a foreign experience for a child, let alone an adult not acclimated to our system of justice. Attorneys frequently use language which is likely to be misunderstood or not understood at all. Judges and attorneys should make sure that all proceedings where a child is involved are carried out in language that the child can understand. Likewise judges and attorneys should do all in their power to lessen the trauma likely to occur when a child testifies.

The child, for example, may feel more comfortable testifying from a location other than the traditional witness stand. In a Massachusetts courtroom, for example, a judge brought in pintsized chairs to make child witnesses feel more comfortable.[49] A child frozen with fear in a Minnesota trial was permitted to testify from under the prosecutor's table.[50] Anatomically correct dolls and drawings are frequently used with great success in helping the child witness describe details for which he or she may have difficulty communicating via oral testimony.[51] Child sexual assault victims in one Wisconsin county are routinely allowed to hold anatomically correct dolls and to have access to a supportive person such as a foster parent or social worker while they testify.[52]

The presence of a person or persons providing emotional support for the child victim or witness may be critical in allowing him or her to testify with a minimum of psychological harm. Sometimes support may come from a parent or other family member. In cases where a child has been abused by a parent or family member, the supportive presence of a teacher, foster parent, or social worker may be more appropriate. The assistance of a victim advocate may also prove helpful in such cases.[53] While many trial judges have used their inherent powers to permit supportive persons to be present and assist the child witness on a case-by-case basis, some states, such as California, have provided by statute for the presence of persons supportive of a victim during his or her testimony.[54] In any event, these persons should be ever mindful to avoid influencing the child's testimony.

Just as important as having supportive persons present while the child testifies is the need to exclude from the courtroom when possible those whose presence is not necessary at pretrial hearings. Although a Massachusetts statute mandating the exclusion of the general public and media from all criminal proceedings where a minor was a victim of a sexual offense was overruled by the United States Supreme Court[55], greater latitude exists at pretrial hearings where the Sixth Amendment right to a public trial does not come into play.[56]

In California, for example, the general public may be excluded from a pretrial hearing while a sexual assault victim testifies "where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm."[57] Wisconsin, meanwhile, requires trial judges to exclude from preliminary hearings in sexual assault cases "all persons not officers of the court, members of the witness' or defendant's families or others deemed by the court to be supportive of them, or otherwise required to attend" at the victim's request and may do so in other cases where a defendant is charged with a "crime against chastity, morality, or decency."[58] The Wisconsin law further permits a judge to exclude minors who are not parties or witnesses from the courtroom during the trial of a case of "scandalous nature."[59] It is not offensive to our system of fair play and justice to permit trial judges across the nation to exercise similar discretion when warranted.

It is frequently difficult for a child victim or witness to face the defendant and his or her family during testimony. Without abrogating the defendant's confrontational rights, some courts have used creative solutions to this problem.

In appropriate cases, courts should permit children to testify by two-way closed circuit television as an alternative to their testifying in the open courtroom a few feet from the defendant. Such contemporaneous examination by means of closed circuit television permits examination of witnesses by both the prosecution and defense in the presence of the defendant; therefore, the defendant is not deprived of his or her confrontational rights.[60]

The Texas Code of Criminal Procedure was recently amended to permit judges to order that abuse victims under the age of 13 may testify by closed-circuit television rather than in open court.[61] The Texas procedure mandates that the court "shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant."[62] The California legislature, which approved the use of closed-circuit television testimony by child witnesses where appropriate at pretrial hearings[63], expanded the law to allow to allow courts in criminal proceedings involving the sexual abuse of a child under the age of 11 to order that testimony be taken by contemporaneous examination and cross-examination in another place and communicated to the courtroom via two-way closed-circuit television.[64] Less costly and electronically sophisticated is the use of one-way mirrors to shield the child victim's view of the defendant while he or she is testifying.[65]

Some jurisdictions have gone to even greater lengths to reduce harm to a child victim in extreme cases. An Arizona trial court permitted the use of hearsay testimony in lieu of that of a five-year-old girl who had been sexually abused by her father. The Arizona Supreme Court upheld the father's conviction and specifically the use of the hearsay statements at trial concluding that "a five-year-old girl should be spared the necessity of testifying against her father in a rape case if at all possible."[66] A similar conclusion was reached by the Indiana Supreme Court in the case of a man accused of kidnapping and raping a four-and-one-half-year-old girl.[67] The Kansas Supreme Court found that a legislatively-created hearsay exception for a child victim's out-of-court statements passed muster under the confrontation clause and was constitutionally applied in the case before the court.[68] A handful of states have laws similar to the 1982 Kansas statute.

Strict guidelines for the use of alternative methods of presenting testimony such as by closed circuit television or videotaped deposition must be developed and implemented. These guidelines should ensure that the defendant's right to confront his accuser is not constitutionally impaired.[69]

More common than the use of alternative means to present the child's testimony is the practice of excusing children from testifying at pretrial and noncriminal hearings where confrontational issues are not of constitutional dimension. For example, a sexual assault conviction was upheld in a Wisconsin case where a judge permitted a ten-year-old sexual assault victim's mother to testify in lieu of her daughter at a preliminary hearing.[70] Likewise, the Wisconsin Supreme Court held that it was proper for a hearing examiner at a probation revocation hearing for a man accused of sexually assaulting his five-year-old stepson to utilize the mother's hearsay testimony of her son's accusations in lieu of his direct testimony.[71]

Testifying in court against another family member may be a painful experience for the child. As discomforting as it may be to relate a sensitive experience in open court in front of strangers, the situation is exacerbated when an abusive family member is present.

The preliminary hearing is one proceeding where a child might be excused from testifying if at all possible. The purpose of the preliminary examination is to determine whether there is sufficient evidence for further prosecution. As these hearings are a creature of statute and not of the constitution there is no federal constitutional right to confront witnesses as there is at trial. Whatever right of confrontation existing at the preliminary hearing, or any other hearing short of the trial itself, results from state statute and thus may be modified without constitutional injustice to a defendant.[72]

The admissibility and sufficiency of hearsay evidence at a preliminary examination is firmly established in the federal courts as well as in many states. For the purposes of the preliminary hearing, the testimony of a police officer, social worker, parent, or other appropriate person to whom the victim related his or her experience should be sufficient. This approach spares the child the anxiety and embarrassment resulting from numerous appearances, continuances, and confrontations with the abuser.[73] The recommendation here (31) is not, however, meant to preclude use of traditional exceptions to the hearsay rule or likewise to discourage the development of new, properly safeguarded exceptions to the hearsay rule for use at trial.

At least 16 states allow courts to take and use a child's videotaped testimony under certain conditions.[74] The approaches taken vary widely. California, for example, permits the use of a videotaped deposition in lieu of direct testimony at pretrial hearings in sexual assault cases[75] and, in cases where the victim is under 16, mandates that judges, upon timely application by the prosecutor, order that the child's preliminary hearing testimony be recorded on videotape which may be used at trial if the court finds that "further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable" to testify.[76] New Mexico, meanwhile, permits the use of a child's videotaped deposition upon a showing that "the child may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm" and the defendant was present, represented by counsel, and had the opportunity to cross-examine the child at the time the deposition was taken.[77] A similar Florida law permits a court to use videotaped testimony of a child abuse victim under the age of 16 at any criminal or civil proceeding in lieu of live testimony in open court "upon a finding that there is a substantial likelihood that such victim or witness would suffer severe emotional or mental distress if required to testify in open court."[78]

In Wisconsin, a prosecutor may seek or a judge on his or her own motion may authorize the taking of a videotaped deposition for use at the preliminary examination and at noncriminal hearings "if there is a substantial likelihood that the child will otherwise suffer severe emotional or mental strain" by his or her live testimony at such hearings.[79] If it is anticipated that the videotaped deposition will be used at trial, the defendant must be allowed to cross-examine the child "in the same manner as permitted at trial."[80] The videotaped deposition may not be used at trial if the defendant did not have the opportunity to cross-examine the child at the time the deposition was taken.[81] Persons not necessary for the proceedings may be excluded during the taking of a videotaped deposition in the same manner as a Wisconsin trial judge may remove from the courtroom unnecessary persons during a sexual assault victim's testimony at a preliminary hearing.[82]

A different approach is taken in Oklahoma where child victims under 12 may testify via closed circuit television or videotaped deposition.[83] The Oklahoma procedure requires that the defendant must be present at the time the testimony is taken but arrangements must be made to ensure that the child can neither see or hear the defendant.[84] A similar provision in Texas applicable to abuse cases where the victim is under the age of 13 requires the court to "permit the defendant to observe and hear the testimony of the child in person" while taking steps to "ensure that the child cannot hear or see the defendant."[85] Unlike the Wisconsin and Florida statutes which permit videotaped testimony of both child victims and witnesses, Oklahoma and Texas allow the use of televised or videotaped testimony only where the child is a victim.

The use of alternate means of presenting a child's testimony to the court via closed circuit television, through a one-way mirror, or by videotape represents a responsible and compassionate approach to the dilemma of securing the child's testimony with a minimum of contact with the defendant and spectators while at the same time preserving a defendant's confrontational right. Its development and use under guidelines designed to safeguard the defendant's right to confront his accuser merits serious consideration.

LEGISLATIVE INITIATIVE

4. State legislatures should, where necessary, enact appropriate legislation to permit modification of court procedures and evidentiary rules as suggested herein and in addition should:

   a) extend the statute of limitations in cases involving the abuse of children;

   b) establish programs to provide special assistance to child victims and witnesses or enhance existing programs to improve the handling of child abuse cases and minimize the trauma suffered by child victims, in cooperation with local communities and the federal government.

COMMENTARY

Effective implementation of these guidelines will require the work of many persons, especially attorneys, judges, and legislators. Remedial legislation may need to be enacted to, for example, amend codes of evidence to broaden the use of hearsay testimony or to permit the use of videotaped or closed-circuit television testimony and to provide guidance for their use. It is likewise necessary in many jurisdictions to consider expanding the statute of limitations in child sexual abuse cases.

Children who suffer sexual abuse are often quite reluctant to report their victimization. They are frequently likely to repress these incidents for years.[86] Such repression may result from a number of factors. Victims may feel somehow responsible for the harm they have suffered or, in many cases, fear that reporting the abuse may be responsible for the destruction of the family unit.

The statute of limitations in criminal cases usually begins running on the day the crime was committed. In many cases, the statute of limitations may have expired by the time that the abuse has come to light and it is thus impossible to bring the accused offender to justice. States should therefore be willing to extend the statute of limitations in child sexual abuse cases. The optimum period should run from the date of the offense until the date of the victim's disclosure.[87]

The American Bar Association and many states have recognized that special efforts are required to aid the victims of crimes and witnesses in criminal proceedings. In enacting the Bill of Rights for Child Victims and Witnesses, the Wisconsin legislature explicitly found that "it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults."[88] Under the Wisconsin plan, counties are responsible for providing these services in addition to those already mandated for victims and witnesses in general with funding assistance from the state.[89] Victim-witness assistance surcharges are assessed against all convicted criminal defendants[90]; additional assessments are levied in cases of domestic violence.[91]

A few states have created special "trust funds" to support programs aimed at the prevention and treatment of child abuse and neglect. Kentucky's Child Victim's Trust Fund receives funds from an income tax checkoff.[92] A similar checkoff supports a trust fund for programs funded by the Child Abuse and Neglect Prevention Board in Michigan.[93] In Wisconsin, the Child Abuse and Neglect Prevention Board provides grants and program assistance funded by a children's trust fund supported by state appropriations and citizen contributions[94].

MEDIA RESPONSIBILITY

5. The public has a right to know and the news media has a right to report about crimes where children are victims and witnesses; however, the media should use restraint and prudent judgement in reporting such cases and should not reveal the identity of a child victim.

COMMENTARY

The criminal justice system and the media encounter a special dilemma concerning child abuse cases. Ironically, while the system of juvenile justice mandates many protections, including anonymity, to juvenile *offenders*, little is afforded to child *victims*.[95] Frequently a victim's identity will be disclosed directly or indirectly via news accounts relating to a child abuse prosecution.

There is much misunderstanding about the dimension of the child abuse problem and the dilemmas faced by victims, offenders, and the system of justice itself. Responsible reporting can do much to educate the public concerning this most serious problem. The news media, however, is reminded that while it has a right as well as an obligation to report news, including that relating to the abuse of children, it must also exercise caution, good taste, and restraint so as not to exacerbate the psychological harm already suffered by an abused child. The identity of an abused child should not be directly or indirectly divulged. This recommendation is consistent with existing policy at several news organizations.[96] It has been suggested that, in incest cases, it might be appropriate for the media to exclude the names of offenders from news reports in order to improve the effectiveness of treatment and to allow some of the families involved to remain intact.[97]

Resolving this dilemma requires communication, not confrontation. The American Bar Association urges editors and news directors to formulate policies encouraging reporting to increase the public's awareness of the problems encountered by child victims and witnesses while maintaining compassion and understanding for the privacy and rehabilitative needs of the victim and his or her family. Attorneys and judges should assist the media in formulating and implementing such guidelines. A collective effort to promote public understanding about child abuse while insuring the privacy of the victim and his or her family in the process is a goal worth pursuing.

FOOTNOTES

[1] Robert Buchanan, *Abused Children: Implications For The Judiciary*, Madison, Wisconsin, Youth Policy and Law Center (1983), p. iv

[2] "Beware of Child Molesters", *Newsweek*, August 9, 1982, p. 45

[3] Sunny Schubert, "Incest: A Sad Secret No Longer Kept", *Wisconsin State Journal* (Madison, Wisconsin), March 27th, 1983, sec. 5, p. 1

[4] *The Role of Law Enforcement In the Prevention and Treatment of Child Abuse and Neglect*, United States Department of Health and Human Services, National Center on Child Abuse and Neglect (1984), p. 4

[5] *Id.*

[6] David Finkelhor, "How Widespread Is Child Abuse?", *Perspectives on Child Maltreatment in the Mid '80's*, National Center on Child Abuse and Neglect, 1984

[7] Cheryl McCall, "The Cruelest Crime: Sexual Abuse of Children", *Life*, December, 1984, p. 35

[8] Eric Brazil and Sam Meddis, "KIDS ON TRIAL...in a grown up world", *USA Today*, January 29, 1985, p. 1A

[9] Buchanan, *Abused Children: Implications For The Judiciary*, p. 1

[10] These guidelines are limited to cases in which children are alleged victims or witnesses of child abuse. the general principles set forth herein may be helpful in other situations where children are victims or witnesses.

[11] *Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases* (1982) and a report entitled *Papers from a National Policy Conference on Legal Reforms in Child Sexual Abuse Cases* (1985) are among the numerous publications on child sexual abuse legal issues published by the ABA's National Legal Resource Center for Child Advocacy and Protection. The former publication contains many suggestions for improving prosecutions, reducing trauma to children, and providing treatment in these cases. It recommends, among other things, alternatives for a child's testimony, a victim advocate for the child throughout legal proceedings, abolishing competency tests for children, and reducing the number of interviews with children. The policy conference report contains the most recent research and information on children's memory and the law, interviewing techniques with young children, constitutional issues relating to videotaping and closed-circuit televising of a child's testimony, and other emerging legal issues in child sexual abuse cases. Among other Resource Center publications are *Evidentiary and Procedural Trends in State Legislation and Other Emerging Legal Issues in Child Sexual Abuse Cases* (1985), *Child Sexual Exploitation -- Background and Legal Analysis* (1983), *Innovations in the Prosecution of Child Sexual Abuse Cases* (1981), *Child Sexual Abuse Legal Issue and Approaches* (Revised Ed. 1981).

[12] *ABA Standards for Criminal Justice*, Special Functions of the Trial Judge, 6-2.2; The Prosecution Function, 3-54.7; and The Defense Function, 4-7.6 (2nd Ed. 1980)

[13] *ABA Standards for Criminal Justice*, Special Functions of the Trial Judge, 6-1.1 (2nd Ed. 1980)

[14] *ABA Standards Relating to Trial Courts* 6-1.1 (2nd Ed. 1980)

[15] John C. Shepherd, "Child Advocacy and Protection Is A Key To The Future", *ABA Journal*, October, 1984, p. 6

[16] Doris Stevens and Lucy Berliner, *Special Techniques for Child Witnesses*, Center for Women Policy Studies, Washington, D.C., no date, p. 3

[17] Buchanan, *Abused Children: Implications For The Judiciary*, p. 20

[18] Va. Code. s. 63.1-248.6

[19] Colo. Rev. Stat. Ann. s. 19-10-109(6)(a)

[20] Attorney General's Task Force on Family Violence, *Final Report*, Washington, D.C., p. 77

[21] The training program is sponsored by the Youth Policy and Law Center of Madison, Wisconsin under contract with the Wisconsin Department of Health and Social Services is cooperation with the Wisconsin Judicial Council.

[22] Ruth S. and C. Henry Kempe, *The Common Secret: Sexual Abuse of Children and Adolescents*, (New York, W.H. Freeman and Co., 1984), p. 83

[23] Wis. Stat. s. 971.105

[24] *Id.*

[25] Wis. Stat. s. 971.10

[26] *Id.*

[27] Attorney General's Task Force on Family Violence, *Final Report*, p. 41

[28] *Id.*

[29] *State v. Gilbert*, 109 Wis. 2d 501, 507, 326 N.W.2d 744 (1982)

[30] *Id.*

[31] "A Hidden Epidemic", *Newsweek*, May 14, 1984, p. 32

[32] 81 Am. Jur. 2d Witnesses s. 90

[33] John Crewdson and Lynn Emmerman, "Children As Witnesses: Double Jeopardy?", Chicago *Tribune*, December 27, 1984, p. 8

[34] Wis. Stat. s. 906.01; *Wis. Jury Instructions-Criminal no. 340*: "A child is a competent witness and his testimony should be weighed in the same manner as testimony of any other witness. Considerations of age, intelligence, ability to observe and report correctly, ability to understand the questions and answer them, sense of duty to speak the truth, conduct on the witness stand, interest, appearance, and other matters bearing on the credibility apply to a child witness in common will all witnesses."

[35] Wis. Stat. s. 906.03; *State v. Davis*, 66 Wis. 2d 636, 225 N.W.2d 505 (1975)

[36] Daniel Goldman, "Studies of Children as Witnesses Find Surprising Accuracy", New York *Times*, November 6, 1984, sec. 4, p.1

[37] Cohen and Harnick, "The Susceptibility of Child Witnesses to Suggestion", 4 Law and Human Behavior 201, 202-3 (1980)

[38] Melton, "Children's Competency to Testify", 5 Law and Human Behavior 73 (1981)

[39] D. Lloyd, "The Corroboration of Sexual Victimization of Children," *Child Sexual Abuse and the Law*, National Resource Center for Child Advocacy and Protection, American Bar Association (1982), note 22, p. 104

[40] *In re: Marriage of Theis*, 112 Ill. App.3d 1092, 460 N.E.2d 912, 917 (1984). *See also United States v. Nick*, 604 F. 2d 1199, 1201 (9th Cir. 1979); *State v. Bloomstrom*, 12 Wash. App. 416, 419-20, 529 P.2d 1124, 1126 (1974); *People In Interest of O.E.P.*, 654 P.2d 312, 318 (Colo. 1982); *State v. Posten*, 302 N.W.2d 638, 640 (Minn. 1981)

[41] *Child Sexual Abuse and the Law*, National Resource Center for Child Advocacy and Protection, American Bar Association (1982), note 22, p. 137

[42] *Smits v. State*, 145 Wis. 601, 604-5, 130 N.W. 535 (1911). *See also State v. Oliver*, 302 N.C. 28, 274 S.E.2d 183, 196 (1981); *State v. Miller*, 71 Kan. 200, 80 P. 51 (1905); *Guiffre v. Carapezza*, 298 Mass. 458, 11 N.E.2d 533, 125 A.L.R. 1 (1937)

[43] Katharine Macdonald, "Child-Molestation Testimony Reveals Inherent Problems", Washington *Post*, January 28, 1985, p. A3

[44] Stevens and Berliner, *Special Techniques For Child Witnesses*, p. 14

[45] Chicago *Tribune*, December 27, 1984, p. 8

[46] *See e.g. State v. Romero*, 34 N.M. 494, 285 P. 497, 498 (1930)

[47] *Davis v. Alaska*, 415 U.S. 308, 316 (1974)

[48] *See e.g. State v. Steik*, 161 Wash. 194, 296 P. 546 (1931)

[49] "A Hidden Epidemic", *Newsweek*, May 14, 1984, p. 32

[50] *Id.*

[51] Attorney General's Task Force on Family Violence, *Final Report*, p. 32

[52] *See e.g. State v. Cole*, Circuit Court for Rusk County file no. 82-CR-134, December 1-2, 1982

[53] Attorney General's Task Force on Family Violence, *Final Report*, p. 38

[54] West's Ann. Cal. Penal Code s. 868.5

[55] *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 102 S. Ct. 2613, 73 L.Ed. 2d 608 (1979)

[56] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980); *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979).

[57] West's Ann. Cal. Penal Code s. 868.7(a)(1)

[58] Wis. Stat. s. 970.03(4)

[59] Wis. Stat. s. 757.14

[60] *State v. Sheppard*, 197 N.J.Super 411, 484 A.2d 1330 (N.J.Sup.L. (1985)

[61] Tex. Stat. Ann. art. 38.071 s. 3 (Vernon 1984)

[62] *Id.*

[63] West's Ann. Cal. Penal Code s. 868.7(a)(1)

[64] West's Ann. Cal. Penal Code s. 1347

[65] *State v. Gilbert*, 109 Wis. 2d 501, 518, 326 N.W.2d 744 (1982)

[66] *State v. Broody*, 96 Ariz. 259, 394 P.2d 196, 199 (1964)

[67] *Allbritten v. State*, 262 Ind. 452, 317 N.E.2d 854, 555 (1974)

[68] *State v. Myatt*, 237 Kan. 17, ___ P.2d ___ (1985)

[69] The Eight Circuit Court of Appeals appropriately pointed out in *United States v. Benfield*, 593 F.2d 815 (8th Cir. 1979) that the parameters of what is a constitutionally permissible curtailment of traditional face-to-face testiony in open court under the confrontation clase "depends on the factual context of each case, including the defendant's conduct." *Id.* at 821. The *Benfield* court cautioned that any exception "should be narrow in scope and based on necessity or waiver." *Id.* The intent of these guidelines is to suggest that alternative methods of presenting the testimony of a child victim or witness should be an available option to be utilized when necessitated by the circumstances in the particular case militating against having the child testify "live" in the courtroom.

[70] *State v. Padilla*, 110 Wis. 2d 414, 329 N.W.2d 263 (Wis. App. 1982)

[71] *State ex rel. Harris v. Schmidt*, 69 Wis. 2d 668, 230 N.W.2d 890 (1975).

[72] *See e.g. Mitchell v. State*, 84 Wis. 2d 325, 336, 267 N.W.2d 349, 356 (1978)

[73] Attorney General's Task Force on Family Violence, *Final Report*, p. 31

[74] "KIDS ON TRIAL...in a grownup world", *USA Today*, January 29, 1985, p. 2A

[75] West's Ann. Cal. Penal Code s. 868.7(a)(a)

[76] West's Ann. Cal. Penal Code s. 1346

[77] N.M.R. Crim. P. (Dist. Ct.), rule 29.1(9) (1980)

[78] Fla. Stat. s. 918.17(1) (1984)

[79] Wis. Stat. s. 967.04(7)(b)

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] Okla. Stat. Ann. tit. 22, s. 753.

[84] *Id.*

[85] Tex. Stat. Ann. 38.071 s. 4 (Vernon 1984)

[86] Attorney General's Task Force on Family Violence, *Final Report*, p. 103

[87] *Id.*

[88] Wis. Stat. s. 950.055

[89] *Id.*

[90] Wis. Stat. s. 973.045

[91] Wis. Stat. s. 973.05, 973.055

[92] Ky. Rev. Stat. s. 41.040, 141.440 (1984)

[93] Mich. Comp. Laws Ann. s. 206.440, 722.603, 722.609 (West 1984)

[94] Wis. Stat. s. 48.982

[95] Libai, "The Protection of The Child Victim of a Sexual Offense In The Criminal Justice System", 15 Wayne L. Rev. 977, 978 (1969); Stevens and Berliner, Special Techniques For Child Witnesses, p. 2

[96] Jeff Benthoff, "Media May Watch Videotaping of Testimony", Milwaukee Sentinel, March 7, 1985, p.4

[97] Eric Lindquist, "Area Media Advised on Sex-Case Reports", Eau Claire (Wis.) Leader-Telegram, September 25, 1984, p. 3

APPENDIX B

American Bar Association

A Program of the
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SECRETARIES
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Publications List

CHILD SEXUAL ABUSE LAW REFORM PROJECT

#1 Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases [A comprehensive blueprint for improving legal intervention to protect sexually abused children] 1982 - 57 pp.

#2 Child Sexual Abuse and the Law [A detailed state survey and analysis of laws and legal issues related to child sexual abuse] 1981 - 204 pp.

#3 Innovations in the Prosecution of Child Sexual Abuse Cases [A survey and description of special prosecutorial approaches and model programs] 1981 - 177 pp.

#4 Child Sexual Exploitation — Background and Legal Analysis [A basic summary of legal issues and laws on child pornography and prostitution] Nov., 1984 - 50 pp.

#5 Child Sexual Abuse-Legal Issues and Approaches [An introduction to the relationship of child sexual abuse and the legal system] Aug., 1981 - 40 pp.

#6 Evidentiary and Procedural Trends in State Legislation and Other Emerging Legal Issues in Child Sexual Abuse Cases [Analysis of recent legislation creating a special hearsay exception for a child victim's out-of-court statement of abuse and legislation for video-taping or televising a child's testimony, including discussion of the constitutional issues relating to these reforms, and summary of other new legal issues] 1985 - 28 pp.

#7 Papers from a National Policy Conference on Legal Reforms in Child Sexual Abuse Cases [Compilation of 16 articles that critically discuss new legal reforms, including constitutionality of videotaping and closed-circuit televising of a child's testimony, expert testimony, interviewing techniques with young children, videotaped interviews, children's memory and the law, and others] 1985 - 320 pp.

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Senator **Grassley**. I think we will call on Mr. Davidson first before I ask you questions. But could I say for the benefit of elaboration on my legislation that where you referred to several things not being considered by my legislation dealing with a child in the courtroom, my legislation is not meant to be limiting.

Ms. **Anderson**. I understand that, Mr. Chairman.

Senator **Grassley**. Concerning everything you brought up, I do not think I could disagree with any factor that you mentioned. Mr. Davidson.

STATEMENT OF HOWARD DAVIDSON

Mr. **Davidson**. Thank you, Senator. I have no specific, prepared remarks. I came to assist Catherine Anderson with any questions you might have. Let me just say a couple of things. One, a personal note: I spent 4 years before coming to the American Bar Association as a trial attorney in the military, and I notice that in the listing of the various changes in the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and so forth, listed in section 7(a), that one of the documents not listed is the Manual for Courts Marshal.

Now, as you know, involvement of the Federal court system in child abuse cases is extremely limited. There is however, an increasing amount of interest and prosecution within the military system of crimes against children committed by military members where the military has jurisdiction over the case. So I would urge you to consider whether the Manual for Courts Marshal that is used in connection with cases prosecuted under the Uniform Code of Military Justice might be included in this proposed study and report, because certainly we know that in all of the military services there is more attention being given to this issue.

The second matter I wanted to address was in connection to the FBI's opposition to section 7. A representative of the Justice Department spoke this afternnoon opposing section 7, and she mentioned in her statement that there are already private sector activities underway in this area. The ABA is certainly proud to be a part of those private sector activities. It was also stated that several reports have either been issued or are about to be issued which deal with the subject, and therefore there was no need for this provision. I would take issue with those suggestions. Certainly the private sector is doing its part and certainly there have been some important reports issued and will be some important reports to come, but I do not think anything can take the place or have the impact of a report from the U.S. Attorney General to the U.S. Congress on reforms that are being proposed for the Federal system.

I do not think anything that has been done can replace the kind of impact that such a proposed model for the Federal court system might have. The private sector is certainly doing its part in addition to the ABA, as was mentioned. For example the National District Attorney's Association is moving into this area with a program to assist prosecutors who are dealing with these cases.

But I personally feel very strongly about section 7 and the impact that it can have. With that, I will just sit back and answer any questions you might have.

Senator **Grassley**. On the point right where you left off, I would like to ask Ms. Anderson, as a local prosecutor who works with these cases on a daily basis, would you see a need for or any help from such a report?

Ms. **Anderson**. Oh, yes. I definitely do. I think that, as I indicated in my remarks, the reports of the President's Task Force on Victims of Crime and the Task Force on Domestic Violence were extremely important to us in developing the ABA guidelines. And, in fact, those documents contain in them many, many more recommendations which you will not find in the ABA guidelines. I ask you to keep in mind that the ABA Criminal Justice Section represents not only prosecutors but defense attorneys, judges, and academicians, and it is the result of a great deal of compromise that these guidelines were developed.

The National District Attorney's Association, which Mr. Davidson has alluded to, has begun a program which they are calling the National Center for Prosecution of Child Abuse Cases. Another group which is working on these issues is the Commission on Uniform State Laws, which was one of the groups that urged us to move forward as quickly as possible with the ABA guidelines. I think that between the Victims Task Force Report, the Domestic Violence Report, what the National District Attorney Association, and the National Association of Attorneys General are doing, the Commission on Uniform State Laws, the ABA guidelines and certainly the important publications of the Center for Child Advocacy and Protection, all of these things could be brought together in one comprehensive document that would provide guidance to the States in developing statutes. In fact, it is my understanding that the National Legal Resource Center is helping to develop some model legislation in the very near future. But all of these things could be brought together and compiled, and it would be extremely useful throughout the country. The 1-year time period designated in section 7 of S. 985 may not be realistic however.

Senator **Grassley**. In reference to or as a takeoff from the *Globe Newspaper* case and also knowing of some cases involving the confrontation clause dealing with hearsay exceptions and videotaped testimony, could you comment for us on the problem with these cases and the potential amount of legislation in this area that may prove to be unconstitutional?

Ms. **Anderson**. There are a number of problems involved here. You will notice that the ABA guideline which deals with closed circuit television includes the caveat, "so long as the defendant's right to confrontation is not impaired." This is a provision which was given a great deal of consideration and was debated at length within the Criminal Justice Section and other entities of the ABA, the reason being that the courts are frankly all over the board on what constitutes confrontation.

In the eighth circuit, in the *Benfield* decision, the court said that it was necessary to have face-to-face confrontation. However, in the *Shepard* case in New Jersey, the year after *Benfield*, specifically rejecting the eighth circuit's reasoning, the court said that the right to confrontation was satisfied in spite of the fact that there was no face-to-face confrontation.

Another problem arises in that half of the States have State constitutional provisions which provide that the right to confrontation is not satisfied unless the defendant is afforded a face-to-face encounter with the witness. In Kentucky, for example, a State videotape statute was struck down based on the State constitutional provision. The reason we added "so long as the defendant's right to confrontation is not impaired," is because the bottom line was that this is an issue which is going to have to be left to court discretion and interpretation until such time as the issue is addressed by the Supreme Court. I am not so sure that even then we do not get around the additional problem which arises when you have individual State constitutions that interpret the right to confrontation in a different way.

Senator **Grassley**. My last question would be asking for your opinion, on the effect, if the statute of limitations in these cases was extended to begin at the age of majority of the victim in child abuse cases.

Ms. **Anderson**. Well, usually statutes of limitations are for a set period of time. If the statute of limitations were to expire—do you mean to expire or to commence running at the age of majority?

Senator **Grassley**. To commence at the age of majority of the victim.

Ms. **Anderson**. I think that it is possible then that the statute of limitations might in some instances become inordinately long. If you have a very young victim that is 5, for example, and your statute of limitations is to run for 10 years, but it does not commence until the age of majority, you have a potential of 23 years before the statute of limitations has expired. And as a former defense attorney, I would argue very strongly that the decay factor in memory over a period of 23 years with a victim at the time of the offense who was 5 years old would be so great as to nullify the index of reliability which is really at the heart of the court proceeding.

Senator **Grassley**. That was my last question, but do either of you have anything in summary or anything that you may have left out that you would like to include at this point in the record?

Ms. **Anderson**. I do not believe so, Mr. Chairman. Thank you again so very much for inviting us to participate.

Senator **Grassley**. Well, it is ideal that you could come and testify in this area because you have done so much work in this area.

Ms. **Anderson**. I apologize for my voice. I have had laryngitis for 2 weeks.

Senator **Grassley**. Well, you take care of yourself. Your health is very important.

This meeting is adjourned.

[Whereupon, at 5:13 p.m., the subcommittee was adjourned.]

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